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Study on Crime Abortion Law Viewed from Law Number 36 Year 2009 on Health

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Abstract:

The cause of the crime of abortion provocatus namely: Pregnancy as a result of sexual intercourse outside of marriage, socio-economic reasons, the reason the child is quite a lot, the reason has not been able to have children, pregnancy due to rape, contraceptive failure, health reasons

Constraints in the investigation of criminal abortion provocatus is that the evidence in the case had been lost or cannot be found anymore. The loss of evidence is much influenced by the possibility of agreement between the perpetrators of the crime of abortion provocatus or help commit the crime of abortion provocatus.

Efforts to control or prevention of abortion can be performed with countermeasures preventive, done in two ways: How Abolisionalistik, which is a way of overcoming crime eliminating / reducing the factors that can lead to crime or to eliminate the causes of crime, for example, it is known that the causes of crime are the economic factors then attempt to prosper to reduce crime caused by economic factors is the way abolisionalistik. Moralistic way, which is a reduction by c fig giving legal counseling, guidance, religion, mental coaching with the aim that people do not become members of lawbreakers. Repressive made after the commission of a crime with the aim that it does not reoccur, countermeasures curative, by conducting healing offender conditions.

Keywords: Law Study, The Crime of Abortion

1. Introduction

An event or events must be the cause, no background or reason. Similarly, abortion. Health is the most important factor in human life, there are times when a woman gets interference on health when she is pregnant, that there are times when the condition of his body was not able to continue to contain. If the content is not immediately aborted, then his life would be threatened. Thus, to save the life of the mother, then there is no way other than by way of an abortion. This action is usually done in the hospital, and it must be determined whether the abortion would do it completely to avoid maternal and severe illness or death due to avoid and contain it.

Determining give permission or deny a therapeutic abortion is a heavy responsibility. Such decisions require not only a deep knowledge about the illness, but also extensive experience and knowledge of many of the prognosis of the disease in pregnancy and childbirth. Abnormalities that could endanger the lives of the mother if she is pregnant, such as heart disease. Despite being warned by doctors; sometimes unplanned pregnancy occurs. If it happens the doctor faced with the choice of saving lives mother to abort or allow the fetus to grow into a baby, the mother died "

Abortion (abortion) since long before medical science experienced rapid development are well known and many women do for various reasons. Abortion methods and techniques emerging, although still using traditional ways both large and in corners downtown city village. There are TBA with masseur by way of massage (serial) some are using potions the traditional, tried to use magical powers through shamanism and so forth, but the development of technology and science field of medical abortion can be performed with a safer and more secure.

Is known abortion in relation to its core medical abortions are performed in the interests of patients in case mother. This is called abortion provocatus therapeticus / medicinalis. That is deliberate abortion on medical grounds in order to save the health or life of the mother.

Medical reasons can be interpreted broadly and can mean a narrow, based on an assessment of each surgeon is concerned, besides the medical indications evolve according to the development of medical science and medicine. Abortion issue lately become a hot topic due to the thoughts and views would legalize abortion for various reasons.

We understand very well that KUHP containing the abortion issue did not tolerate and strictly forbids abortion for any reason so that no single article that justify it. Development of science and technology is very fast and also more advanced science, shifting the mindset standpoint consciously or unconsciously helped change the understanding of abortion for various reasons. Indeed, by some

considered accommodating the Criminal Code because it does not resolve the issue. Just look at the Criminal Code in black and white regardless of the various factors that cause abortion. This may be the real cause of the Criminal Code is a product of Dutch colonial that is not necessarily applied in Indonesia and even in the Netherlands alone Unsurprisingly birth origin of the Criminal Code has undergone many changes.

2. Formulation of the Problem

1. What are the factors that cause abortion abortion?
2. How abortion in terms of legislation in Indonesia?
3. How did efforts to prevent the crime of the crime of abortion?

3. Discussion

Abortion implies abortion. The word abortion or abortion, in the community is not a phrase or term that strange and unfamiliar heard. In general, people are able to understand if the word spoken abortion, especially urban communities.

Sometimes pregnancy a woman can fall by itself without an act or acts or deliberate. It is often called the "miscarriage" or spontaneous abortion. This often occurs in women who are pregnant are still young, while he was doing the heavy-weight or too much moving or also due to an illness suffered. However, in this paper will be discussed is the problem of Ortus deliberate that in terms of medical science called abortion provocatus. In general, abortion or abortion can be interpreted as the "exit of the products of conception (fetus) is not the time and the mother's womb and cannot live outside the womb"

According to the understanding of medicine, abortion (either miscarriage or abortion) means the interruption of a pregnancy that occurs between when implantation of the fertilized ovum (blastocyst) in the womb until 28 weeks of pregnancy. Limit of 28 weeks counted from the last menstrual period 'because before 28 weeks, the fetus' cannot live. According to the law definition birth abortion is a fruit of the womb prematurely by an act that is a criminal act. In this sense, the attention focused on the phrase "by an act of a person who is as criminal acts.

Law on Health, Law No. 36 of 2009, does not mention the word abortion, but in Article 75 of Law No. 36 Year 2009 on Health implicit understanding of abortion / Article 75 paragraph (1) specify that in case of emergency in an attempt to save the lives of pregnant women or the fetus can be done a certain medical procedure.

Code Penal (Penal Code) does not regulate the definition of abortion, but the Criminal Code strictly prohibits any abortion with as provided for in Article, 289, 299 and Article 346-349 of the Criminal Code. Even in Article 289 of the Criminal Code essentially threatening sentence of imprisonment up to four years to someone who gave hope to a woman that abortion can be aborted.

In medical science known to some kind of abortion, namely:

a. Spontaneous abortion or natural

abortion that occurs by itself without any external influence and, for example, the quality of the egg and sperm that are less good, or because of the deformity of the uterus, can also be caused by the disease.

b. Habitual abortion

Sometimes - sometimes easy woman miscarried that caused by interference from outside very lightly once, such as slips, falls, riding, jumping and so on. Usually these events occurred on the fifth week of gestation until the fifteenth.

c. Abortion provocatus Therapeutic

At a critical moment to help the soul of the mother, pregnancy needs to be terminated by abortion. This is justified by medical reasons.

d. Abortion provocatus criminalis

This is the abortion is done deliberately, either by the mother or by another person with the consent of the mother. This is done with a specific reason, such as embarrassment pregnant out of wedlock. If done by yourself, then the way is by taking medications or herbal hot with the intention of so that the blood circulation in the body becomes excessive in the lower abdomen so that the uterus becomes sensitive and easy to perform contraction.

3.1. Factors Why of Abortion

Health is the most important factor in human life, a woman sometimes gets interference on health when she is pregnant, that there are times when the condition of his body was not able to continue to contain. If the content is not immediately aborted, then his life would be threatened. Thus, to save the life of the mother, then there is no way other than by way of an abortion. Usually mi acts done in the hospital, and it must be determined whether the abortion would do it completely to avoid maternal and severe illness or death due to avoid and contain it.

Some of the reasons, why the background of ongoing pregnancy was later aborted, among others:

3.1.1. Medical Reasons

Abnormalities that could endanger the lives of the mother if she is pregnant, misalnva heart disease. Despite being warned by doctors; sometimes unplanned pregnancy occurs. If it happens the doctor faced with the choice of saving lives mother to abort or allow the fetus to grow into a baby, the mother died "

Nani Soewondo, itemize medical reasons as follows:

- a) To save the lives of the mother / woman
- b) To maintain the health of the mother / woman

- c) To prevent severe and permanent disruption to women's health.
- d) To prevent harm to the physical or mental health of a woman or a child in the family.
- e) To prevent danger to life or health of the woman.
- f) To prevent birth with a physical or severa mental.

From the reasons mentioned above, the reasons 1 and 2 many countries legalize, among others, France, Switzerland, Canada, Pakistan and Thailand, as a reason to allow abortion. Reasons point 3, legalize laws such as the Law in Peru. Reasons point 4 of Law in Denmark, point 6 of Law in the United States.

3.1.2. Pregnant for Rape

Advance technology and Science both in the field of communication, transportation, and others no negative impacts on life today. Advances in technology is now able to present a variety of entertainment to the public, such as television, video cassette and others. Progress in the field of communication and allow rapid transport relations with other countries. Due to the many external influences and enter into the life of our society, especially among young people, as an example of the more outstanding books illegal porn, porn video cassette, the culture of people who are not in accordance with the customs of our nation.

As a result of all this is to increase crime among young children and adolescents, especially sex crimes. It is not uncommon show school children. If this continues, it is feared the moral deterioration of our youth who will be expected as the next generation of national struggle. We are not surprised to hear the news of rapes committed by some young men against one woman besides seizing belongings of the woman sometimes killed.

Among women who are raped it could be a girl who was underage. There is more news we hear or read in the newspaper that a father's heart to tarnish his own son. All that invites us to always be vigilant and introspective. If the acts mentioned above led to the pregnancy the woman concerned how the baby in the womb. When held accountable and those who are committing such crimes. It is impossible, then the path is to perform the abortion. There are some things that cause people to do abortion if there is such a case, among others:

a. Ashamed to society

It may be understandable, such as the pregnancy resulted from an act and those who have a blood relationship with him. He realized people would reproach him and he may even be socially ostracized and society. Especially if he lives in a residential neighborhood a sense of togetherness is still tight, so that not a single thing that could be covered or hidden and knowledge of the people in their environment, such as people would whisper when she saw bejajan. Everything is a mental burden for him and his entire family.

b. Those who do not may be held accountable civil.

If there is a pregnant woman due to her biological father and actions or by his biological brother, how is it possible to hold the father with civil liability is to marry his son or his brother. Accountability can be requested or imposed is criminal liability.

Rape is a traumatic bitter experience of the soul raped. If the rape that makes pregnancy, it's during pregnancy and the subsequent birth of the child will remind him of the man who raped her, will always remind him of the traumatic event. So when a pregnancy due to rape, they certainly have a good reason to choose that abortion should continue aborted rather than keep it, although in fact the act was contrary to the applicable law.

3.1.3. Unborn child Suffers Serious Flaws

Advancement of medical technology has enabled humans to know since I was a fetus in the womb. Not only about the sex, but also about whether the fetus is suffering from a disability or not. One of the severe disabilities that can be detected early is a physical or mental disorder known as syndrome down.

At this disorder, besides there are severe physical abnormalities, there are also mental development disorders are very late (idiot). If the child was born her life will always be dependent on others.

In addition to Down syndrome, the head does not grow (anencephaly or clogged cerebrospinal fluid (hydrocephalus) can also be detected since the fetus is still in the womb. Abnormalities that too will lead to the birth of the child all his life cannot be separated and dependence to the lain.

In such circumstances, doctors cannot stand off themselves and must notify the parents, so that they are mentally prepared to deal with it and can determine next, there is a possibility that the couple's parents prefer abortion rather than letting children born will be a burden to others for a lifetime.

3.1.4. Socio-Economic Reasons

Human needs are unlimited, while the tools to meet these needs is limited and very limited. And it's hard to find a balance, especially in the last period in which the economic recession hit the economy of each country in the world. Because people are increasingly careful and efficient in fulfilling their needs.

Although this situation is not so pronounced for groups The people with money, but it is not the case with people whose lives economically weak Monday-Thursday, it means a mediocre economy. Income derived not able to meet all the needs of the family. Let alone for other needs, to eat alone is gratitude that enough. Day by day increasing expenses, while income earned and salaries generally only husband daily or monthly basis. Children need education and care, not to mention other needs. As a result, it was

decided that the wife should also be looking for additional income. Therefore, the task of the wife as homemaker gain weight. Besides, he had to take care of children and household, then he should also think about additional income.

Not to mention the family had to have eight children and have registered as participant's KB. Until one day the mother felt that it contains, where it makes the mother's home and think seven circumferences. Various considerations in mind, sometimes arise his mind old saying "lots of kids, lots of luck", but then changed again. Slay all the sense in his heart that says that the offense is prohibited and contrary to the teachings of their religion. However, finally decided to immediately abort.

3.2. Abortion Terms of Legislation In Indonesia

The general rule on abortion other than stipulated in the Criminal Law Act also stipulated in Article 75 of the Health Act. Provacatus provisions regarding abortion in the Criminal Code can be found in Chapter XIV of the Second Book of the crime of morality in particular Article 229, and Chapter XDC Second Book of the Penal Code, specifically Article 346, 347, 348 and 349 of the Criminal Code. According to Leden Marpaung, setting the Criminal Code on "abortion" is as follows:

- a) Abortion by the mother had been provided for in Article 346 of the Criminal Code,
- b) Abortion by others without permission of a pregnant woman under Article 347 of the Criminal Code
- c) Abortion with women who conceived him permission set forth in Article 348 KUHP.

Wirjono Prodjodikoro according to the Criminal Code, there are similarities and differences between the murder of a child by abortion or murder kandungan.¹⁴ Similarities between murder or murder a child by abortion, the content is, that there should be the content (vrucht) or infant (kind) were alive and then turned off. This equation also led to the crime of abortion (abortion) is included in the title XIX book II of the Criminal Code on crimes against the lives of people. The fundamental difference between infanticide and abortion is that the murder of the child must be a baby who was born and lived, was in aborting or off the content, what comes out of the mother's body is a content, which is alive but not so baby (onvoidragen vrucht) or unborn. The difference is what causes the maximum penalty on abortion (four years) is lighter and the murder of children (seven years).

Abortion is done based on medical reasons or considerations have been regulated in Article 75 of the Health Act. In paragraph (1) above article specifies "in a state of emergency in an attempt to save the lives of pregnant women or the fetus, can be done a certain medical action". And the provisions of paragraph (1) of Article 75 of the Health Law can be seen that abortion can be done if the medical procedure that must be done, which is an attempt to save the lives of pregnant women or fetus.

The explanation of the verse states "specific medical measures in the form of abortion for any reason is prohibited because it is contrary to legal norms, religious norms, obscenity, and norms of decency. However, in case of emergency in an attempt to save the lives of pregnant women or fetus certain medical action can be taken.

See the formulation of Article 75 paragraph (1) of the Health Law and an explanation of the above, it appears that in essence the Act also embraces abortion provocatus criminalis, except for the type of provocatus therapeuticus abortion (abortions performed to save the life or the mother and fetus). Seen that abortion regulation under the Health Act is also very limitedly, because based on the description above, provocatus medicinalis abortion can only be performed if the mother's life in danger of death. The same opinion was also expressed by Darwin Muhadjir Health Act which states that abortion can only be justified if it is done as an emergency measure to save the lives of mothers (abortion medicalis). Beyond that, abortion aid can be categorized as a crime (abortion criminalist). Highly restrictive abortion laws mi did not make abortion rate in Indonesia is low. This law only makes it difficult rescue safe abortions obtained by women experiencing unwanted pregnancies.

Deliberate abortion in violation of various provisions of the law (abortus provocatus criminalis) contained in the Criminal Code adheres to the principle of "illegal without exception" considered very burdensome paramedics in performing their duties.

According to the author, the principle of "illegal without exception" does not reflect the values of justice because there are some reasons to be implemented measures such abortion to save the pregnant woman or an abortion due to rape.

Article about abortion set out in the Criminal Code is also contrary to the contents of Article 75 of the Health Act, where in one hand prohibits abortion in all grounds and on the one hand but on the medical indications allow to save the pregnant woman or the fetus. According Sudikno Mertokusumo quoted in the book Suryono Ekotama, et.all said here applies the principle of *lex posteriori derogat legi priori*.¹⁶ This principle assumes that if enacted new regulations by not repeal the old laws governing the same material from both of them contradict each other, the new regulations were defeated or paralyze the old regulation. Thus, Article 75 of the Health Act which regulates abortion provocatus medicinalis remain in force in Indonesia despite the fact that the rule is at odds with the formulation of abortion provocatus criminalis according to the Criminal Code.

Abortion provocatus known in Indonesia by the term abortion is derived from the Latin word meaning abortion due to deliberate. Provacatus abortion is one of the various types of abortion. In the Latin-Indonesian dictionary itself, abortion is defined as born before prematurely or keguguran.¹⁰ According CB. Kusmaryanto, SCJ, the notion of abortion or abortion called provocatus is the termination of pregnancy and the delivery of the uterus before the fetus can live outside the womb. With the word "spending" it meant "that the fetus accidental discharge due to human intervention, either through mechanical assistance, medication or how lainnya.¹¹ Understanding Abortion provocatus according to the provisions of Article 346 of the Criminal Code is" A woman who intentionally abort or shut down abortion or get someone else for it shall be punishable by imprisonment of four years ". And understanding the purposes of Section 346 of the Criminal Code, the crime is punishable:

1. The woman who intentionally causes the womb into the fall or die, or
2. The woman who deliberately get someone else causes the womb into the fall or die,
3. The others are encouraged to do so.

Thus it can be seen that the abortion by judicial construction of the laws and regulations in Indonesia is the act of aborting or turning off the content carried by a woman or a man who was told to do for it. Pregnant women in this case was a pregnant woman who wants an abortion at will, whereas action under the Criminal Code can be told to do for it is a physician, midwife or drug interpreter. Abortion or the killing of the fetus in the womb can be done by various means, e.g. by drugs taken or with a device inserted into the uterus through the hole the female genitalia.

Under these conditions, then under Article 346 of the Criminal Code can be found several elements, among others:

1. Pregnant women or those who were told to do to it,
2. intentionally,
3. cause the fall or the death of the womb.

Someone said to have committed the crime of abortion, if the person has committed acts that meet the elements in Article 346 of the Criminal Code. Nevertheless, in Article 347 paragraph (1) of the Criminal Code which states "Whoever with the intent to cause the fall or the death of a woman not content with the woman's consent, in the criminal with imprisonment for a twelve-year-old. So from the contents of the article above can be added to abortion not only pregnant women or those who were told to do to it, but also by people without consent of the pregnant woman has committed the crime of abortion.

The first element and the crime of abortion under Article 346 of the Criminal Code is an element of "pregnant women or those who were told to do to it" (the subject of a criminal offense). In the Criminal Code there is no clear explanation about this, but a pregnant woman can be interpreted as a woman whose eggs had been fertilized by a sperm cell that does not menstruate until delivery womb or in other words a pregnant woman is a woman who contains there is a fetus and the first day after fertilization until birth. People are told to do for that is the person with the consent of the pregnant woman committed the crime of abortion, for example, doctors, midwives, interpreters medicine, shaman, or a person who has the ability to have an abortion.

The second element of the criminal offense under Article 346 of the Criminal Code is an element of "intentionally". What is meant by "deliberate" is have the intention or desire to do something. Form intentionally in a criminal act of abortion may be taking drugs deterrent menstruation with high doses, inserting sharp objects into genitals, go to shamans, or perform any action to abort.

The third element of offenses under Article 346 of the Criminal Code is an element of "causing death fall or content". What is meant by "led to the fall or the death of the womb" is a fetus in the womb of the woman out ahead of time to arrive due to coercion or acts done intentionally, so that the fetus is dead or dying.

Abortion is meant by the Criminal Code Article 346 is different from the crimes set forth in Article 341 of the Criminal Code that specifies "A mother who, for fear of getting caught gave birth to a child, when the child is born or shortly thereafter, deliberately depriving the lives of their children, threatened, for killing children alone, with a maximum imprisonment of seven years ". According to the aforementioned article, which carries a penalty in this article is a mother - to kill his own child, when the child was born or sometime later after the child was born, for fear that the birth of the child was known by lain.¹²

Abortion is referred to in Article 346 of the Criminal Code only covers abortion because of deliberate abortion provocatus course, while the natural abortion or miscarriage cannot be defined as a criminal offense because it does not include the elements contained in the Criminal Code that is the element of intent.

3.3. Occurrence Crime Prevention Crime of Abortion

When examined more in depth, the key issue is abortion provocatus gestation undesirable. If you want to take countermeasures abortion, then it must first seek to cope with unwanted pregnancies. Efforts such as:

a. Family planning programs that have been launched by the government, through the ministry of contraception for couples of childbearing age. This is because the government is only providing services to infertile married couples, but for couples of childbearing age who are not married but are sexually active is vulnerable to unwanted pregnancy.

b. The use of contraceptives. not absolutely prevent pregnancy. Many women become pregnant due to failure of contraceptives.

According to CB Kusmaryanto that failure could be due to various factors, for example, forgetting to take the pill, condoms leak, improper use of contraceptives, poor quality contraceptives and other lainnya.

The existence of the government since early counseling to couples of childbearing age through education and the mass media on reproductive health and the ways in which good and true in the prevention of pregnancy. Education can be provided through seminars or counseling about reproductive health to all elements of society and provide education through the mass media. Seeing the rise of criminal cases provocatus abortion today, it is time for the public and law enforcement agencies take positive steps in the prevention of the crime of abortion. The measures should be in conformity with the moral and not burdensome so as to create justice for the people.

4. Conclusion

1. As for the cause of the crime of abortion provocatus namely:

- a) Pregnancy as a result of sexual intercourse outside of marriage
- b) Socio-economic reasons
- c) The reason children are pretty much
- d) The reason has not been able to have children
- e) Pregnancy due to rape

- f) Failure of contraceptives
- g) Health reasons

2. As for the obstacles in the criminal investigations of abortion provocatus is that the evidence in the case had been lost or cannot be found anymore. The loss of evidence is much influenced by the possibility of agreement between the perpetrators of the crime of abortion provocatus or help commit the crime of abortion provocatus.

3. Anticipation or prevention of abortion can be performed with countermeasures preventive, done in two ways:

a. How to Abolisionalistik, which is a way of overcoming crime by eliminating / reducing the factors that can lead to crime or to eliminate the causes of crime, for example, it is known that the causes of crime are economic factors that attempt to prosper to reduce crime caused by economic factors is abolisionalistik way.

b. Moralistic way, which is a reduction by c fig giving legal counseling, guidance, religion, mental coaching with the aim that people do not become members of lawbreakers. Repressive made after the commission of a crime with the aim that it does not reoccur, countermeasures curative, by conducting healing offender conditions.

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