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Abortion in Indonesia



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About ICJR

Since its establishment in 2007, the Institute for Criminal Justice Reform (ICJR) has committed to take the initiative in supporting overall criminal justice reform. ICJR was formed to support collective actions honoring the Rule of Law and realizing a criminal justice system with strong human rights protection.

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Introduction

This edition of ICLU discusses the regulation in Indonesia regarding Abortion in the new Criminal Code, Law No. 1 of 2023, and other domestic laws. Plenty of the abortion situation in Indonesia is not systematically reported because of the abortion policy in Indonesia, which still regulates all aspects of abortion from an act, information until service with punishment approach.

Before the new Criminal Code*, the permissibility of abortion was only limited to conditions, namely, pregnancy as a result of rape with a limited gestational age of only eight weeks and a detected medical emergency indication from an early age of the pregnancy, either threatening the life of the mother and/or fetus, which suffering from severe genetic disease and/or congenital disorder, or those who cannot repair, making it difficult for the baby to live outside the womb.

* which was agreed on December 6, 2022, passed on January 2, 2023, and will entry into force on January 2, 2026.

However, for those two limited conditions, a study from ICJR in 2020 found that there was no safe abortion service to be accessed by the public. One of the obstacles is because of limited regulations, which the gestational age limit for conducting an abortion for rape victims is eight weeks, so it is impossible to build a health system in providing services.

In the New Criminal Code discussion, before it was passed, there was a policy proposal to increase the gestational age limit to allow conducting an abortion, not only for rape victims but for sexual violence to become 120 days. It was included in the Draft of New Criminal Code (RKUHP) November 2019 version after a series of protests back in September 2019 about the draconian character of the draft, one of which related to women's rights. But then, some developments occurred, and until it passed, the novelty in the Criminal Code relates to abortion for victims of sexual violence becomes for the gestational age limit of 14 weeks and pregnancy for medical emergency indications, as stated in Article 463 paragraph (2) Criminal Code. This article will discuss whether these developments are sufficient for fulfilling the rights of victims of sexual violence in Indonesia.

Happy reading,

Erasmus A.T. Napitupulu
Editor-in-Chief/Executive Director

I. The Situation of Abortion Globally and in Indonesia

Global Situation

Bearak and others, in a research report published in 2020, explained that from 2015 until 2019, the incidence of unwanted pregnancy reached 121 million per year. This number shows 64 unwanted pregnancies happen to every 1,000 women aged 15-49 years old.¹ Compared to the data from the previous period, the number of unwanted pregnancies decreased from 1990 to 1994. It is different if it is compared with the number of needs for abortion, that the number of abortions generally is the same between the period of 1990-1994 with the period of 2015-2019.² In 2015-2019, 61% of unwanted pregnancies ended with an abortion. With this data, it is shown that there are 73,3 million abortions every year, which is equivalent to 39 abortions per 1,000 women aged 15-49 years old.³ From that number, it was calculated that 3 out of 10 pregnancies ended with abortion.⁴

What becomes interesting is that abortion incidence is higher in low and average-income countries than in high-income countries. The number of abortions in 2015-2019 in average-income countries is 44 abortion/1,000 women aged 15-49 years old; for a low-income country, it is 38 abortion/1,000 women aged 15-49 years old, while for high-income countries, it is merely 15 abortion/1,000 women aged 15-49 years old.⁵ The research is also reporting the number of abortions based on region, as follows:

| Region | Unwanted pregnancy rates | Abortion rates |
|----------------------------|--------------------------|----------------|
| Sub Saharan Africa | 91 | 33 |
| West Asia and North Africa | 86 | 53 |
| Middle and South Asia | 64 | 46 |
| East and South-East Asia | 58 | 43 |
| Global | 64 | 39 |

1 Jonathan Bearak, et. al, *Unintended pregnancy and abortion by income, region, and the legal status of abortion: estimates from a comprehensive model for 1990–2019*, www.thelancet.com/lancetgh Vol 8 September 2020, p. E1154, [https://www.thelancet.com/pdfs/journals/langlo/PIIS2214-109X\(20\)30315-6.pdf](https://www.thelancet.com/pdfs/journals/langlo/PIIS2214-109X(20)30315-6.pdf),

2 *Ibid.*, p. E1157

3 *Ibid.*, p. E.1155

4 WHO, 2021, *Abortion*, <https://www.who.int/news-room/fact-sheets/detail/abortion>

5 Jonathan Bearak, et. al., *Op.cit.*, p. E1157

The Relation between Abortion Rates and Abortion Legal Status

This research is also searching for answers to abortion rates based on the legal status of abortion action. This finding is interesting as there is no evidence that abortion rates become lower in countries that ban abortion.⁶ Number of unwanted pregnancies in countries that ban abortion is between 68-79 and 32-42 abortions per 1,000 women; meanwhile, for countries that legalize abortion, the number of unwanted pregnancies is between 53-66 and 23-30 number of abortions per 1,000 women.⁷

Generally, abortion rates are nearly the same between countries that prohibit and countries that legalize abortions. The number of unwanted pregnancies is significantly different between countries that prohibit and those that regulate; this is because those countries have extensive use of contraceptives and more robust health systems, which can provide services and health and reproductive so that unwanted pregnancy can be prevented.⁸ This is in contrast to countries that prohibit abortion; by prohibiting an abortion, unwanted pregnancies must face legal risk, financial⁹ even physical risk¹⁰ when trying to seek access to abortion. Unsafe abortion services will give financial and health risks due to complications that may be experienced.¹¹

Unsafe Abortion

The latest global research estimated that in 2010-2014, 45% of abortions were conducted unsafely.¹² The research noted that in that period there was

6 *Ibid.*, p. E1158

7 *Ibid.*, p. E1159

8 Michaleen Doucleef, 2022, *Do restrictive abortion laws actually reduce abortion? A global map offers insights*, <https://www.npr.org/sections/goatsandsoda/2022/05/27/1099739656/do-restrictive-abortion-laws-Actually-reduce-abortion-a-global-map-offers-insigh>

9 When abortion is banned, then women with unwanted pregnancies do not have access where to go, if she knows, then she must access the service which means it has financial consequences. See: Liza Fuentes, et. al., *Women's experiences seeking abortion care shortly after the closure of clinics due to a restrictive law in Texas*, <https://pubmed.ncbi.nlm.nih.gov/26768858/>

10 Violence against women is common among women who have abortions. With abortion services restricted, women must still interact with their partners who committed violence. See: Sarah Cm Roberts, 2014, et. Al., *Risk of violence from the man involved in the pregnancy after receiving or being denied an abortion*, <https://pubmed.ncbi.nlm.nih.gov/25262880/>

11 Susheela Singh, 2010, *Global Consequences of Unsafe Abortion*, https://www.researchgate.net/publication/49645552_Global_Consequences_of_Unsafe_Abortion

12 Bela Ganatra, et. al., 2017, *Global, regional, and subregional classification of abortions by safety, 2010–14: estimates from a Bayesian hierarchical model*, <https://www.thelancet.com/action/showPdf?pii>

55,7 million abortions were conducted in the world, and 30,6 of them (54,9%) were conducted safely, generally in developed countries. In comparison, for unsafe abortion, 45% or 25,1 million abortions.¹³ 97% of unsafe abortions were conducted in developing countries.¹⁴ More than half of unsafe abortions were conducted in Asia (the majority are in South Asia and Middle Asia).¹⁵

This research concluded that there is a gap between developed countries and developing countries, whereas abortions in developed countries are mainly conducted safely.¹⁶ Regions with the lowest abortion rates are countries in North Europe and North America, where those countries have looser legal provisions on abortion, high use of contraceptives, high economic growth, high levels of gender equality, and advanced health infrastructure.¹⁷

The safety level of abortion is related to the legal status of abortion in a country. Of all abortions in the world that were studied in 57 countries, 87,4% were conducted safely, compared to only 25,2% safe abortions in 62 countries that entirely prohibit abortion or are only permitted due to saving the mother's life.¹⁸ This is consistent with the previous study, which had done that the rate of unsafe abortion is higher in countries that have stricter abortion laws than in those that regulate abortion (prevalence of unsafe abortion in countries that prohibit 23/1000 women) while for countries that regulate only 2/1000 women.¹⁹

Globally, it is estimated that every year, there are 19-20 million abortions performed by untrained persons or in an unsuitable environment with health standards. As many as 68,000 women die as a result of unsafe abortion.²⁰ Millions of them are having permanent complications.²¹ The study in 2006 mentions that in 13 developing countries (in Africa (Egypt, Nigeria, and Uganda), Asia (Bangladesh, Pakistan, and the Philippines), Latin America and the Caribbean (Brazil, Chile, Colombia, Dominican Republic, Guatemala, Mexico, and

[=S0140-6736%2817%2931794-4](#), p. 2377

13 *Ibid.*, p. 2377

14 *Ibid.*, p. 2373

15 WHO, 2021, *Abortion*, <https://www.who.int/news-room/fact-sheets/detail/abortion>

16 Ganatra, et. al., *Op.cit.*, p. 2378

17 *Ibid.*, p. 2378

18 *Ibid.*, p. 2377

19 Janie Benson, et. al., 2006, *Unsafe abortion: the preventable pandemic*, https://www.researchgate.net/publication/6670970_Unsafe_abortion_the_preventable_pandemic, p. 1913

20 *Ibid.*, p. 1908

21 *Ibid.*, p. 1908

Peru), there are 5 million women hospitalized in hospital related to abortion every year.²² This data is equivalent to 5.7 for every 1000 women.²³

The research published in 2014 that studied maternal death from 2003 to 2012 found that 7,9% of maternal deaths were due to unsafe abortion with an estimated value range of 4.7% - 13.2% Maternal Mortality Rate (MMR) or equivalent to 193,000 pregnancies.²⁴ However, data on MMR caused by unsafe abortion does not describe the actual condition because it is not reported that legal provisions still prohibit abortion. In the context of abortion being permitted by state law, cultural and religious perceptions still make abortion data not reported.²⁵ The leading causes of death due to unsafe abortion are bleeding, infection, sepsis, genital trauma, and necrotic bowel.²⁶

A study in Uganda identified MMR cases in 2016-2018 found that 13 women (aged 17-35 years old) died due to unsafe abortion (2,6% from all data),²⁷ the deaths were due to slow health facilities²⁸ because the abortion was only discovered after it was carried out unsafely, delays in reporting to service facilities contributed to 9 MMR. Service delays contributed to 6 deaths, but only partially 8 MMR is due to complications that cause bleeding.²⁹ Similarly, in India, between 2007-2011, there were 1.876.462 abortions, 582,66 of which were unsafe, and there were 253 abortions related to MMR. Not only related to health, but social aspects also have an impact.

Abortion Situation in Indonesia

Not much research can find the need for safe abortion or pregnancy termination in Indonesia by induction; it is because of the legal provision that

22 Susheela Singh, 2006, *Hospital admissions resulting from unsafe abortion: estimates from 13 developing countries*, <https://pubmed.ncbi.nlm.nih.gov/17126721/>

23 *Ibid.*

24 Lale Say, et. al., 2014, *Global causes of maternal death: a WHO systematic analysis*, <https://www.thelancet.com/action/showPdf?pii=S2214-109X%2814%2970227-X>, p. E331

25 *Ibid.*

26 Lisa B. Haddad, 2009, *Unsafe Abortion: Unnecessary Maternal Mortality*, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2709326/#:~:text=Every%20year%2C%20worldwide%2C%20about%2042,of%20maternal%20mortality%20\(13%25\)](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2709326/#:~:text=Every%20year%2C%20worldwide%2C%20about%2042,of%20maternal%20mortality%20(13%25))

27 Imelda Namagembe, 2021, *Preventing death following unsafe abortion: a case series from urban Uganda*, <https://reader.elsevier.com/reader/sd/pii/S266657782100037X?token=C2AC17E2D7A9B8A882B-7D6A5A8E2C3546EA90B5C8BFE7543F2E359535CS5F43BF9A94CDFEA4A7DDF7DAB-6D9A7E7D4259B&originRegion=eu-west-1&originCreation=20220927154448>, p. 3

28 *Ibid.*, p. 5

29 *Ibid.*, p. 4

entirely prohibits any activity related to abortion, only with limited exceptions. There are only two research that are trying to show abortion rate estimation towards 1000 women per year in Indonesia. In 2000, based on a study which was conducted in six regions in Indonesia, the estimated abortion was 37 abortions for every 1000 women aged 15-49 years old; this number is considered high compared with Asia regionally.³⁰ During that time, at the Asia regional level, the abortion rate was 29 abortions per 1000 pregnancies.³¹ Average women who conducted abortion are 20-29 years old (46%) with most of them are married with 66%.³²

The newest research in Indonesia has merely reached Java Island using the AICM³³ Modification method, which concludes that abortion in Java Island in 2018 reached 1.698.230, with such an abortion rate in Java Island of 42,5 abortions per 1000 women aged 15-49 years old.³⁴ This rate is higher compared to the global abortion rate, which is 39/1000 women, which the Guttmacher Institute also estimated.³⁵ Regarding abortion methods, in 2018, 73% of abortions were conducted by self-managed or safe self-abortion, and 21% were assisted by doctors or midwives. At the same time, 6% are using traditional services or pharmacists. Herb is reported as the most used abortion method, with 40% of women and 8% of them having complications. Women who used the operation method only 6%, used pills or other medicine 16%, and used different methods such as traditional massage 39%.³⁶ The newest research providing such many abortions in Java concludes that though abortion is prohibited and stigmatized in society, there is a significant number of women who conduct abortion, showing there is a necessity for better services on contraception, also for unmarried women, including safe abortion service and also service post-abortion service for complication caused by unsafe abortion.³⁷

30 Guttmacher Institute, 2008, *Abortion in Indonesia*, https://www.guttmacher.org/sites/default/files/report_pdf/ib_abortion_indonesia_0.pdf

31 *Ibid.*

32 *Ibid.*

33 Abortion Incidence Complications Method

34 Jesse Philbin, et.AL., 2020, *Estimating the Incidence of Induced Abortion in Java, Indonesia, 2018*, https://www.ipasindonesia.org/wp-content/uploads/2020/12/IPAS-Indonesia_Riset_Kejadian-Aborsi-di-Jawa-2018.pdf

35 Guttmacher Institute, 2022, *Unintended Pregnancy And Abortion Worldwide Global And Regional Estimates Of Unintended Pregnancy And Abortion*, <https://www.guttmacher.org/fact-sheet/unintended-pregnancy-and-abortion-country-level-estimates-explained>

36 Guttmacher Institute, 2020, *Op.cit.*

37 Jesse Philbin, et. al., 2020, *Loc.cit.*

Maternal Mortality Rate in Indonesia

In 2015, the Central Statistics Agency reported the Maternal Mortality Rate (MMR) is at a rate of 305 deaths per hundred thousand pregnancies.³⁸ Further development in the Consolidated Report on Indonesia Health Sector Review 2018 by the Ministry of National Development Planning of the Republic of Indonesia (Bappenas) reported that in 2017, the Infant Mortality Rate (IMR) based on the Demographic Health Survey (DHS) was 24 per 1,000 births. Although the MMR and IMR in Indonesia are showing a decline, with efforts to increase prenatal care services from 63% to 79%, Bappenas still states that the MMR level in Indonesia is still high.³⁹

This number is considered high if compared with the global number, with global MMR in 2020 being 223 per 100.000 births,⁴⁰ while the latest data in Indonesia is still reporting higher numbers than such numbers. In 2017, WHO reported MMR estimation in Indonesia became 177 per 100.000 births.⁴¹ Meanwhile, in target sustainable development (SGDs), MMR in 2030 is 70 per 100.000 births.⁴²

As explained earlier, the maternal mortality rate from 2003 until 2012 shows that 7,9% of deaths were caused by unsafe abortion, with an estimate of 4,7%-13,2% Maternal Mortality Rate (MMR), which is equal to 193.000 births.⁴³ But MMR data caused by unsafe abortion does not describe the actual condition because of the unreported issue, specifically with legal provisions prohibiting abortion. It is happening in Indonesia; until now, no comprehensive data shows MMR caused by unsafe abortion in Indonesia.

According to the latest data in the Health Profile from the Ministry of Health, total maternal mortality in 2020 was 4.627, which then increased in 2021 to 7.389. From the health profile, the number of deaths caused by abor-

38 UNFPA Indonesia, *Maternal Health*, <https://indonesia.unfpa.org/en/topics/maternal-health-6>

39 Bappenas, 2018, *The Consolidated Report on Indonesia Health Sector Review 2018*, <https://www.unicef.org/indonesia/media/621/file/Health%20Sector%20Review%202019-ENG.pdf%20.pdf>, executive summary.

40 WHO, 2023, *Maternal mortality*, <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality>

41 WHO, 2019, *TRENDS IN MATERNAL MORTALITY Estimates By WHO, UNICEF, UNFPA, World Bank Group And The United Nations Population Division*, <https://www.who.int/data/gho/data/themes/maternal-and-reproductive-health/maternal-mortality-country-profiles>, page 73

42 SDG Target 3.1., <https://www.who.int/data/gho/data/themes/topics/topic-details/GHO/sdgtar-get3-1-reduce-maternal-mortality>

43 Lale Say, et. al., *Op.cit.*, p. E331

tion is so low that in 14 death cases, this could be caused by unreported abortion because of the fear of criminalization for the parties involved. The most causes reported of maternal mortality are bleeding (1.320 incidents), hypertension with pregnancy (1.077 incidents), circulatory system disorder (65 incidents), metabolic disorder (80 incidents), heart (335 incidents), Covid-19 (2.982 incidents) and 1.309 others incidents.

Another research on the cause of MMR was conducted several times in Indonesia. In 2016, research was published on Maternal Mortality in Indonesia: Follow-up Study Indonesian Population Census 2010, which concluded that the highest risk of MMR was pregnancy under the age of 15. Most of the deaths happened after the childbirth process (56%), 57% occurred in hospitals, and 31,3% occurred in-house. Oedema, proteinuria, and hypertensive disorder in pregnancy become the cause of maternal mortality as much as 27%, while complications in the childbirth process at 26%.⁴⁴ Another research in 2021 for MMR in East Java shows that problems in the health system affect MMR. This research was previously based on MMR data in East Java, in which maternal mortality in East Java was caused by pre-eclampsia/eclampsia (30.1%), hemorrhage (24.7%), hearth problem (10.8%) and infection (4.8%).⁴⁵

While another research on MMR in Indonesia examines the relationship between Keluarga Berencana (family planning program) and the use of contraception with MMR, this research estimates that from 1970 until 2017, around 523.885 to 663.146 maternal mortality could have been prevented using contraception.⁴⁶ This research shows a relation between the Keluarga Berencana program and the number of maternal mortality prevention programs.

Safe Abortion before the 2023 Criminal Code

Normatively before Law No.1 of 2023 on the Criminal Code was passed, Health Law (2009)⁴⁷ and some of the regulations below⁴⁸ in Indonesia regulat-

44 Tin Afifah, et. al., 2016, *Maternal Death in Indonesia: Follow-up Study of the 2010 Indonesia Population Census*, <https://www.neliti.com/publications/108207/maternal-death-in-indonesia-follow-up-study-of-the-2010-indonesia-population-cen>

45 Mahmood, MA, 2021, *Health system and quality of care factors contributing to maternal deaths in East Java, Indonesia*, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0247911#pone.0247911.ref001>

46 Budi Utomo, et. al., 2021, *The impact of family planning on maternal mortality in Indonesia: what future contribution can be expected?*

47 Law on Health No. 36 of 2009, Article 75

48 Government Regulation No. 61 of 2014 on Reproduction Health; Ministry of Health Regulation No. 3

ed on implementation of safe abortion for limited conditions such as medical emergencies and pregnancy because of rape. However, the implementation is still a problem, and in some cases,⁴⁹ a request to implement legal abortion is not provided by some of the government institutions. Some of the obstacles to the implementation of safe abortion are administrative abortion and a safe abortion management system, which is not adequate in Indonesia. Although normatively has been regulated by the Law, the state has not appointed health facilities to perform safe abortions legally for rape victims.⁵⁰

Furthermore, in the implementation, training on safe abortion has not been conducted by the government, although the Minister of Health Regulation mandates it.⁵¹ The training should give knowledge regarding service post abortion in health facilities and also abortion methods recommended to be conducted. Medical personnel who have undergone this training will be certified to become medical personnel to perform safe abortions. With current conditions, there are no certified medical personnel to perform safe abortions, and there is no list of health facilities appointed by the state as a recommended place to perform safe abortions. Practically, the abortion practice conducted so far is executed using a mechanism by the Ethics Committee in the hospital and is legally questioned.⁵²

Abortion in matters of medical emergency is conducted through a health approach, while sexual violence victims are conducted through a legal approach using medical reports. At the police level, there is no particular standard for handling sexual violence/rape victims. In enforcing legal practice, in Indonesia, there is no case in handling sexual violence/rape victims who are given abortion services or emergency contraception.⁵³

No appointed health facilities which could give safe abortion services af-

of 2016 on Training and Organizing Abortion Service for Medical Indication and Pregnancy Caused by Rape

49 M. Nasikhuddin, 'Permohonan Aborsi Legal Anak SD Korban Pencabulan di Jombang Ditolak', Radar Jombang, <https://radarjombang.jawapos.com/nasional/12/08/2021/permohonan-aborsi-legal-anak-sd-korban-pencabulan-di-jombang-ditolak/>

50 Ririn Indriani dan Dinda Rachmawati, 'Layanan Aborsi Aman dan Legal untuk Korban Perkosaan Mengapa Sulit Diakses?', <https://www.suara.com/health/2019/02/21/070000/layanan-aborsi-aman-dan-legal-untuk-korban-perkosaan-mengapa-sulit-diakses?page=all>, Suara, 2019

51 Ministry of Health Regulation No. 3 of 2016 on Training and Organizing Abortion Service for Medical Indication and Pregnancy caused by Rape

52 Maidina Rahmawati, et. al. 2021, *Penyelenggaraan Kebijakan Aborsi Aman, Bermutu, dan Bertanggung Jawab sesuai dengan UU Kesehatan di Indonesia*, Jakarta: ICJR, page 29

53 *Ibid.*, page 33

fect rape victims, as happened in Jombang in July 2021, where a rape victim (12 years old) by a 56 years old man was having an unwanted pregnancy, an abortion request was rejected by the police investigator with the reason of “in-experience.” It is clear because there are no appointed health facilities.⁵⁴

Another obstacle is the disharmony problem of regulation on safe abortion in the previous Health Law 2009 vs. Criminal Code and Child Protection Law. 2009 Health Law has regulated that there is an exemption for abortion in Article 75 for medical emergency indications and rape victims. Article 194 of Health Law also regulated criminal acts for every person to conduct an abortion following provisions as stipulated in Article 75 paragraph (2) will be punished with a maximum of ten years and a maximum fine of Rp 1.000.000.000,00 (1 billion rupiah). The existence of criminal provisions in Health Law is not in line with abortion provisions under the Criminal Code. The Criminal Code regulates several actions related to abortion, and each provision gives different punishments.

Criminalization for showing abortion tools to minors (Article 283 of the Criminal Code) should be revoked by Health Law 2009 as it is not relevant anymore because safe abortion tools are specific to certain tools and also medical tools; then, the development of this article is not needed anymore. The criminalization of drugging a woman or ordering her to be medicated, saying that because of the medication, the pregnancy could be aborted in Article 299 Criminal Code should be revoked in Health Law 2008 and formulated with an exception for counselors and medical personnel. Criminalization for every woman with an intent to abort or kill the fetus or order another person in Article 346 Criminal Code should be revoked by Health Law 2009 and excluded in Health Law 2009 towards women who conduct abortions because of medical emergencies and rape victims.

Article 348 of the Criminal Code on abortion based on the agreement should be revoked by the Health Law 2009 and excluded in Health Law 2009 towards doctors/ medical personnel who conduct abortions because of medical emergency indications and rape victims. Article 349 on doctors, toxicologists, or pharmacists who are helping with abortion should be revoked by the

54 Fadiyah Alaidrus, 'Ia Diperkosa lalu Hamil. Disarankan Aborsi, tapi Polisi Melarangnya. Korban Trauma Berat', <https://projectmultatuli.org/ia-diperkosa-lalu-hamil-disarankan-aborsi-tapi-polisi-melarangnya-korban-trauma-berat/>

Health Law 2009 and exclude doctors/ medical personnel who conduct abortions because of medical emergencies and rape victims.

Besides the problem of not having appointed health facilities and the problem with the legal framework, another obstacle is the difficulty of giving safe abortion services for rape victims since the legal provisions are still limiting the age limit, which is only 40 days. The short period makes it impossible to build.

II. Policy Changes in Guarantee Safe Abortion in Indonesia Through the New Criminal Code 2023 and New Health Law

Indeed, what civil society is pushing for is the decriminalization of abortion for all conditions, with the spirit of recognizing the integrity of someone's body who has a womb. However, the current legal politics, Executive, and Legislative are not in a position to fasten decriminalization of abortion. Then, the government and the House of Representatives (DPR) approved Article 463 paragraph (2) of the New Criminal Code, which contains exceptions to the criminalization of abortion that are further strengthened with the formulation.

Abortion

Article 463

- (1) *Every woman who conducts an abortion shall be punished by a maximum imprisonment of 4 (four) years.*
- (2) *The provision stipulated in article (1) does not apply to women who are victims of rape crime or sexual violence which causes pregnancy at term does not exceed 14 (fourteen) weeks or has a medical emergency indication.*

With this regulation, there is a strong guarantee to the rights of sexual violence victims⁵⁵ who are pregnant to get safe abortion access because it has been regulated with a stronger legal framework, which extends the age of pregnancy until 14 weeks. Previously, the exemption of abortion under Article 75 of Law No. 36 of 2009 on Health is merely for rape victims and only for pregnancy age of 40 days or eight weeks which is challenging to be implemented as it has

55 Not limited to rape victims, but expanded to sexual violence victims

a short period.⁵⁶ Article 194 of Law No. 36 of 2009 on Health, which regulates abortion contradicting the law, has been revoked by Article 622 paragraph (1) (v) of the New Criminal Code; thus, all the safe abortion regulation will be based on exemption on this New Criminal Code.

After passing the New Criminal Code in August 2023, the Government and the House of Representatives also passed the New Health Law Number 17-year 2023, which in Articles 60 and 61 regulate abortion to be in line with the New Criminal Code. However, it includes the mandate that the government has to establish a Government Regulation (Peraturan Pemerintah) to administer all aspects specific to abortion (unlike the Health Law 2009, which regulates the implementing regulation of abortion in Government Regulation on Reproductive Health).

The changes in policy in the New Criminal Code and New Health Law are aligned with the limit of safe abortion; even when WHO states that the age limit is still not based on modern science, the current safe abortion with technology development could be conducted until 28 weeks of pregnancy using various methods. Based on WHO, the technology of safe abortion could be conducted with Medical Abortion,⁵⁷ which is for pregnancy aged less than 12 weeks with

- Recommend undergoing the medical process yourself with health workers, pharmacists, nurses, toxicologists, and general and special doctors.
- The maximum pregnancy period is ten weeks (70 days) to carry out the process of medical abortion by a non-doctor.
- For this recommendation, the medical abortion based on available evidence is mifepristone plus misoprostol, or misoprostol (the use of letrozole is not included.)

Other methods of medical abortion are also could be conducted for pregnancy aged $\geq 12 - 14$ weeks, with

- The use of 200 mg mifepristone through the mouth, followed 1-2 days after with repeated doses of 400 ug misoprostol through the vagina, under the tongue, or left in the mouth every 3 hours.
- When only using misoprostol, the use was conducted with repeated doses of 400 ug. Conducted through the vagina, under the tongue, or

56 Rahmawati, *Op.cit.*, page 33-34

57 WHO, 2022, *Abortion care guideline*, <https://www.who.int/publications/i/item/9789240039483>

left in the mouth, every 3 hours.

- Recommend medical processes conducted by general or special doctors.

In this framework, the executive and legislative (House of Representatives) of Indonesia only allow safe abortion for sexual violence victims until the pregnancy age of 14 weeks with limits and safe abortion methods based on the operation.

Remaining Issues

The current New Criminal Code and New Health Law try to open up space for women 'sexual violence victims' and also safe abortion provider services to be not criminalized. However, there is still an inconsistency in the New Criminal Code about abortion. Although regulation towards abortion and its exception has been regulated, there is an Article 251 paragraph (1) of the New Criminal Code which criminalizes an action of giving a medicine by informing that the medicine could abort fetus, with formulation as follows:

*Any person who gives or asks a woman to use a medicine **by informing** or causing expectation that the medicine could cause abortion shall be punished by a maximum imprisonment of 4 (four) years or a maximum fine of category IV.*

Another article that is also inconsistent is Article 409 on the criminalization of action showing tools for aborting fetus, with formulation as follows:

*Any person without rights **openly displays a tool to abort the fetus**, offers, publishes or demonstrates to be able to obtain tools to abort the pregnancy shall be punished by a maximum imprisonment of 6 (six) months or a maximum fine category II.*

Explanation:

"Tool to abort fetus" is every object that, according to the nature of its use, can cause abortion.

Apart from that, at the more technical level of implementation and policy, the Health Minister Regulations Number 3 of 2016 on Training and Organizing Abortion Services for Medical Indications and Pregnancies Resulting From Rape must be adjusted following the new provisions in the New Criminal Code.

Author



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