

Legal Protection Against Abortionists Of Rape Victims

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Article Info

Received:

Revised:

Accepted:

Keywords:

Legal Protection,
Abortion Perpetrators,
Rape Victims

Abstract

Rape is a crime that causes trauma to the victim, besides the trauma of rape can also cause pregnancy in the victim. Pregnancy from rape behavior is certainly a pregnancy that the victim did not expect, so that not a few have abortions for their pregnancies. This study aims to determine the legal protection for abortion perpetrators who are rape victims. This study uses a normative legal research method with a normative juridical approach, while data collection techniques are carried out by exploring journals, books and applicable laws and regulations. The results of the study show that legal protection for abortion victims of rape is with the policy of Article 76 of the Health Law which considers the condition of rape victims so as to allow abortion with certain conditions stated in the law in it.

I. Introduction

Rape is among the crimes that often occur in the order of life of the public. Rape includes sexual crimes because the act is biased towards matters that have the nature of sexuality. Rape can occur in private as well as public areas, which are frequent victims of women. After that, it is reviewed through the age of the rape victim, it can occur in individuals who have an adult age as well as children. In the discussion of the law of positive punishment, rape is among the acts of punishment described in the Criminal Code .

Rape victims have the potential to feel relatively poor trauma because the incident is a matter of shock. Mental turmoil can be experienced during rape or afterwards and can be followed by physical impacts (Sari, 2013). There are so many cases of rape that have tragic consequences are traumatic victims, victims of

suicide and for women can cause unwanted pregnancies. According to the assessment report (Faturachman, 2002) of the psychological consequences of women who feel rape, an assessment carried out by MS Magazine magazine (in Warshaw, 1994) "Explained that 30% of women who identified feeling rape had the intention of committing suicide, 31% conducted a psychotherapy search, 22% carried out self-defense training, and 82% explained that the impression had given the victim permanent changes, in the sense that it could not be forgotten".

Pregnancy from rape behavior is certainly a pregnancy that the victim did not expect, so not a few have an abortion on her pregnancy. The pregnancy received by the victim is very contrary to reproductive rights. The pregnancy then caused the bad consequences of suffering from her physical, psychic and social. The victim feels psychic trauma and feels himself worthless in the eyes of the audience. This can encourage victims to carry out abortions that can threaten their lives, namely through techniques outside of medical, through non-medical personnel who do not have the skills and in the gestational age that is not sufficient for medical requirements (Afifah, 2013).

Abortion means miscarriage of the womb. In KBB, abortion is an abort of the womb According to Ria based on the definition of abortion is the death and release of the pregnancy period before 20 weeks or the weight of the fetus is not up to 500gr, the length does not reach 25 cm. The medical definition explains that abortion is a pregnancy before viability, before the fetus can live alone in the womb, which is predicted to be under 20 weeks of gestation (WHO). This understanding clearly explains the meaning that abortion is carried out on fetuses that cannot live in the womb (Wijayati, 2015).

Abortion can occur due to various things including getting pregnant outside of marriage. Economic inability, lack of family support, and problems with your partner. On the other hand, abortion can also be carried out if the pregnancy endangers the life of the mother and fetus (Agustin, 2021). Regarding the reason why women carry out abortions, in fact, according to the data collected by (Saifullah, 2011) it is very varied, but the main reason is non-medical reasons. In the United States, the reasons for women to perform abortions are:

1. Do not want to have children because they are worried about disturbing their career, school or other obligations (75 %).
2. It is not enough to have enough money to carry out treatment and send their children to school (66%).
3. Do not want to have a fatherless offspring (50%).

There are two techniques that can be used to perform a pregnancy abortion, namely using drugs or operating. However, if carried out not through professional medical personnel, or using techniques that are not good, or in a place through limited means, the activity of aborting the womb can cause harm to the female

body including it can cause complications, fertility problems and problems in the next pregnancy (Makarim, 2021).

Rape activity is a criminal act that has a sexual disposition that occurs when an individual coerces another individual to carry out intercourse in the form of vaginal and penile penetration, with coercion or violence. In the Kbbi, rape comes through the word rape which has the meaning of arousing or committing offenses through violence. The rape is explained to be the stages, techniques, acts of raping or committing offenses through violence (Tim Prima Pena, n.d.). There are six categories of rape including the following (Atmasasmita, 1992):

1. Sadistic Rape

Sadistic Rape is a sadistic rape, meaning that in this category sexuality and aggressiveness are mixed in form that deals damage. The alleged rapist has been seen enjoying erotic excitement not with sex alone, but with horrific assaults on the genitals and body of his victims.

2. Anger Rape

Anger Rape is to persecute sexuality that has the characteristics of sexuality that are targeted to explain and vent feelings of anger and restrained emotions. The victim's body here seems to be the target of who is the suspect who is doing the projection of the solution to the frustrations, shortcomings, hardships and feelings of disappointment in life.

3. Domination Rape

Domination Rape is a rape that exists when the suspect attempts to persevere the power and superiority of the victim. The point is to sexually subjugate, the suspect hurts his victim, but still has the will to have intercourse.

4. Seductive Rape

Seductive Rape is a rape that occurs in circumstances that provide stimuli that arise through both parties. In the beginning, the victim stipulates that the intimacy of personality must be given a limit not to the extent of being in harmony. Suspects usually have a belief that coercion is required, so as to have no sex-related guilt.

5. Victim Precipitated Rape

Victim Precipitated Rape is a rape that exists through the placement of the victim as a pioneer.

6. Exploitation Rape

Exploitation Rape is rape that proves that in every opportunity to carry out the intimate relationships that men get and take advantage that is contrary to the circumstances of women who depend on them according to economic and social. For example, a wife who is raped by her husband or a domestic assistant

who is raped by the employer, the assistant does not dispute or make a complaint to the authorities. But in terms of criminality, the violence leads to different behaviors including related to the intention or related to the activity, such as rape and murder, the two categories of crimes followed by violence.

Rape cannot be felt easily not only to cause physical injuries, but also to have an impact on psychic wounds that are difficult to resolve. The act of rape can cause psychic trauma to those who feel it. Victims of sex violence tend to feel several psychic problems including self-blame, mental disorders and suicidal ideation. The consequences based on the physicality of the victim can be affected by sex-transmitted diseases, unwanted pregnancies, and various other medical conditions (Tamin, 2021).

Legal protection is a safeguard given to legal actors in the form of a device including those that have the nature of prevention or repression, including oral or written. So it can be said that legal protection is a separate depiction of the function of the law, which has an idea of the language of the law providing a sense of justice, a sense of order, provision, expediency and a sense of peace (Kambey, 2021). Meanwhile, based on Philipus M. Hadjon, he has the opinion that Legal Protection is the protection of dignity and dignity, and recognition of human rights owned by law actors according to legal provisions through authority (Nurmala, 2018).

However, in addition, the act of abortion is an unlawful act. Abortion is an activity of performing an abortion. In the Indonesian nation, this activity is not allowed, and is included in the Crimes on Life Chapter in the Criminal Code (Widowati, n.d.). According to this problem, the reviewer has an interest in carrying out a study entitled "Legal Protection of Abortion Perpetrators of Rape Victims". Then, the discussion in this article is related to the legal theories of protection of rape victims to answer the problem relevantly and tested for validity.

2. Research Method

This research uses normative legal research methods. Legal assessment through a doctrinal approach that has a normative nature, or normative juridical law studies or normative legal studies in principle is an activity that then examines the internal domains of positive law. The normative juridical approach is an approach that leads to the law and the rules of the Law that aret (Benuf & Azhar, 2020).

Data collection techniques are carried out through exploring journals, books and the rules of the existing Law. The required information is searched on a Google Scholar search with several writing formats.

3. Results and Discussion

Abortion in Legal Perspective

Medical abortion means stopping through death and removing the fetus at an age of not reaching 20 weeks through a weight not reaching 500 grams, which is before the fetus can live outside the womb independently (Susanti, 2013). The bill still contains provisions related to abortion. Every woman who aborts is still criminalized. But based on discriminatory, the RKUHP instead contains provisions such as the formulation of the Health Law through distinguishing actions between doctors and their victims (Institute Criminal Reform, n.d.).

In positive law in Indonesia, the rules for the problem of aborting the womb are in articles 346, 347, 348, 349, and 350 of the Criminal Code. Based on the provisions contained in articles 346, 347, and 348, 349 of the Criminal Code, abortions that occur as a result of individual actions in those articles include acts of aborting the womb and killing the womb (Lestari, n.d.). Thus, quoted from the page (Medan Area University, 2021) the criminal law for abortion suspects is explained in Article 194 of the Health Law which reads:

"Any person who intentionally performs an abortion not in accordance with the provisions as referred to in Article 75 paragraph (2) shall be punished with a maximum imprisonment of 10 years and a maximum fine of Rp1 billion."

Article 194 of the Health Law can carry out the appointment of doctors and / or health workers who deliberately carry out illegal abortions, or women who deliberately carry them out. Then, the sentencing sentence for suspected illegal abortion was explained in the Criminal Code. The provisions are:

Article 299

- a. Whoever knowingly treats a woman or instructs her to be treated, by being told or raised the hope that because of the treatment her pregnancy may be aborted, shall be punished with imprisonment for not more than four years or a fine of not more than forty-five thousand rupiah.
- b. If the guilty do so for profit, or make the deed a search or habit, or if he is a healer, midwife or drug-teller, his sentence may be increased by a third.
- c. If the person guilty of committing the crime in the course of carrying out the search, then it may be deprived of his right to conduct that search.

Article 34 paragraph (1): "Whoever intentionally aborts or turns off the womb of a woman with her consent, shall be punished with imprisonment for not more than five years and six months."

Article 349: "If a doctor, midwife or drug lord assists in committing an offence under section 346, or commits or assists in committing any of the offences

described in articles 347 and 348, then the penalty prescribed in that article may be supplemented by one-third and may be deprived of the right to conduct a search in which the offence is committed." In its application, if there is a doctor who performs an abortion, so that the public can report the doctor to the police for investigation. Then, if there is indeed relatively sufficient evidence that the doctor has deliberately performed an illegal abortion on his patient, so that the stage of punishment is then forwarded through the investigator and the prosecutor's office before the stage in court.

Rape Victims' Legal Protection

Abortion is an unlawful act, but there are several exceptions in this case including according to the cause of emergency conditions and to carry out psychiatric rescue of the mother and / or fetus, so that health workers in particular have the authority to carry out abortions regarding this matter in accordance with Law Number 23 of 1992 (Lestari, n.d.). However, the abortion activities described in Article 75 paragraph (2) of the Health Law can only be carried out after consultation before the activity and facilitated through counseling after the activities carried out by counselors who are competent and have authority. Then, abortion can only be carried out (Medan Area University, 2021):

- a. Before becoming pregnant at the age of 6 weeks counting on the day of the beginning of the last menstruation, except in the case of medical emergencies;
- b. Through health workers who have the skills and authority who have a certificate decided by the minister;
- c. Through the licensing of related pregnant women;
- d. Through the licensing of the husband, with the exception of the rape victim; and
- e. Health care providers who meet the requirements decided by the Minister.

Thus, abortions that are contrary to the rules of the Law as described are illegal. For rape victims, the requirements of Article 76 letter d are exceptions, until the requirements that must be fulfilled are Article 76 letters a, b, c and e. The abortion ban exception does not delay the abortion ban. If the abortion requirement is not fulfilled, so that the abortion is illegal and is classified as a criminal act that is threatened with criminal sanctions (Afifah, 2013).

4. Conclusion

Rape is a criminal act that causes trauma to the victim, in addition to rape trauma can also cause pregnancy in the victim. Pregnancy from rape behavior is certainly a pregnancy that the victim did not expect, so there are not a few who carry out abortions on their pregnancies. Legal protection for abortion offenders of rape victims with the existence of a policy of Article 76 of the Health Law which considers the condition of rape victims so as to allow abortion through certain requirements contained in the law in it. According to calculations related to the circumstances of the victim of the act of rape conviction, there are indications that give the cause of the justification for carrying out abortion. This matter is based on Article 75 paragraph (2) of the Health Law and Article 31 of Government Regulation Number 61 of 2014 related to Reproductive Health which explains that: The reason for the justification for the implementation of the abortion must certainly be accompanied by other requirements, especially in terms of explanation.

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