

*JURIDICAL ANALYSIS OF THE CRIME OF ABORTION (Study of Decision Number 40/Pid.B/2020/PN Wno)*

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**Abstract**

This study aims to find out the judge's considerations in decision Number 40/Pid.B/2020/PN Wno and to find out the decision in case Number 40/Pid.B/2020/PN Wno in terms of positive law in Indonesia. The type of research used in this study is normative legal research or library research with 3 approaches, namely the statutory approach, the case approach and the conceptual approach. The results of this study indicate that the basis for the judge's considerations in imposing a sentence on the case referred to in the judge's decision Number 40/Pid.B/2020/PN Wno is juridical in nature consisting of the public prosecutor's indictment, witness testimony, defendant's statement, evidence, and Apart from that, the articles in the criminal code are non-juridical in nature, namely the reason for the defendant's actions and the consequences of the defendant's actions. That the crime of abortion has violated the provisions of Article 346 of the Criminal Code, this can be seen because the elements in accordance with that article have been fulfilled. Because of the above considerations, the judge decided that the defendant was found guilty so that the defendant had to serve a prison sentence of 1 year and 10 months.

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## INTRODUCTION

Adolescence is the transition point of life from childhood to adulthood. Many changes occur in adolescents, ranging from physical to psychological, including hormonal changes, brain development, social and emotional development, and the search for identity. Adolescents are the most influential generation in establishing national values, which are expected to improve the state's condition<sup>1</sup>. In addition, adolescence is the point where individuals begin to search for self-identity and determine how they want to be seen by society. One of the ways that some teenagers might choose to find their own identity is by promiscuity.<sup>2</sup> Promiscuous behavior can pose serious physical and mental health hazards, such as physical health which includes transmission of sexually transmitted diseases, unwanted pregnancies, and even death in some cases. Unwanted teenage pregnancies can negatively impact the physical and mental health of both the mother and the baby, and often these pregnancies end in abortions<sup>3</sup>.

Etymologically, the term "abortion" means "miscarriage", "abortion", or "abortion". In the medical world, abortion means abortion, which means releasing the products of conception (fertilization or meeting of the egg with sperm cells). Abortion is quite a strange problem because it involves various aspects of human life, including law, ethics, morals, and religion. Abortions that are not carried out legally and safely pose a risk of physical complications such as bleeding, infection, and damage to the reproductive organs. Abortion can also increase the risk of anxiety and depression in women. Abortion itself is divided into 2 types, namely Abortus Provocatus Therapeuticus/Spontaneus and Abortus Provocatus Criminalis. Abortus Provocatus Therapeuticus is an abortion performed for medical indications, namely to save the mother's life or avoid serious health risks. Abortus Provocatus Criminalis is an act of abortion that is carried out illegally and violates criminal law.

Even though Indonesian law prohibits abortion, there are still many cases of abortions being carried out illegally by people who do not have a valid medical license or permit. Several factors, including low education and knowledge about reproductive health, lack of access to information about contraception and reproductive health, poor economic conditions, and social stigma against pregnancies outside of marriage, can influence the crime of abortion provocatus<sup>4</sup>. In addition, social norms that require women to maintain family honor and avoid social humiliation can also force them to take such actions.<sup>5</sup>

The legalization of abortion in the medical world is intended to reduce abortions performed by incompetent persons, such as traditional birth attendants. There are those who categorize abortion as murder. In addition, there is a religious prohibition on abortion because the fetus also has the right to live, so it must be preserved. According to Law Number 36 of 2009<sup>6</sup> concerning Health, abortion may only be carried out under certain conditions, such as to save the mother's life or endanger the mother's health. Abortion provocatus is carried out without a valid reason and under conditions that are prohibited by law, so it is an act that violates the law.

The crime of abortion provocatus requires strict and fair legal treatment to ensure that this action is not carried out again in society and ensures that the defendant receives a punishment that is in accordance with the actions taken. In dealing with cases of criminal acts of abortion provocatus, judges must consider juridical and normative aspects so that decisions taken can be in accordance with applicable law. Therefore, it is necessary to do an analysis of the judge's

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<sup>1</sup> Dinas Kesehatan Pemerintah Yogyakarta, *Profil Kesehatan Tahun 2020 Kota Yogyakarta (Data Tahun 2019)* (Yogyakarta, 2020).

<sup>2</sup> Bella Ester Neva Lombok and Dkk., 'Abortus Provocatus Terhadap Korban Perkosaan Menurut Peraturan Perundang-Undangan Di Indonesia', *Lex Privatum*, 6.11 (2021), 131.

<sup>3</sup> M. F Bukoting, Arten Mobonggi, and Selviyanti Kaawoan, 'Dampak Pergaulan Bebas Terhadap Peningkatan Angka Putus Sekolah Di Desa Kuala Utara Kecamatan Kaidipang Kabupaten Bolaang Utara', *PEKERTI: Jurnal Pendidikan Islam & Budi Pekerti*, 1.1 (2020) <<https://core.ac.uk/download/pdf/288186161.pdf>>.

<sup>4</sup> M Kusmiati and others, 'Pendidikan Kesehatan: Bahaya Pergaulan Bebas Remaja', *Jurnal Pemberdayaan Dan Pendidikan Kesehatan (JPPK)*, 2.1 (2022) <<https://doi.org/10.34305/jppk.v2i01.441>>.

<sup>5</sup> Aris Prio Agus Santoso, *Hukum Kesehatan* (Jakarta: Trans Info Media, 2020).

<sup>6</sup> Pemerintah Republik Indonesia, *Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan Reproduksi* (Indonesia: Lembaran Negara Republik Indonesia, 2009).

decision in the case of the crime of abortion provocatus to find out whether the decision meets the applicable juridical and normative requirements or not. One of them is the case that occurred at the Wonosari District Court in Decision Number 40/Pid.B/2020/PN Wno regarding abortion. The Criminal Code itself does not distinguish between Abortus Provocatus Therapeuticus and Abortus Provocatus Criminalis, both of these are still abortions regardless of the reasons because these two things are acts that can be subject to criminal sanctions.

Apart from that, in 75 of the Health Law which states a prohibition on abortion and strengthened by Article 77 of the Health Law which states that "The government is obliged to protect and prevent women from having abortions as referred to in Article 75 paragraphs (2) and (3) which are not of good quality, unsafe, and irresponsible and contrary to the norms and provisions of laws and regulations".

Then the panel of judges only handed down a sentence of one year and ten months which did not support government programs at all in protecting children's rights, where the defendant had lost the life of a baby (fetus), this clearly violated human rights, namely the right to life regulated in Article 28A of the Law The 1945<sup>7</sup> Constitution of the Republic of Indonesia and Law Number 39 of 1999<sup>8</sup> concerning Human Rights to be precise in article 53 that a child has been protected since he was in the womb. Seeing the goal of the theory of punishment, namely the theory of retributive, where the purpose of this theory is punishment is not retribution for crimes committed by someone. So, in my opinion, the verdict passed by the judge against the defendant was very light and unfair with the very heinous act of the defendant who had an abortion.

## RESEARCH METHODE

This type of research is normative legal research or library research . The approach used in this research is to use 3 kinds of approach methods, namely the statutory approach, the case approach and the conceptual approach. In addition, this study uses 3 data sources, namely primary data, secondary data, and tertiary data. Data collection techniques and data analysis techniques in this study used literature study with content analysis.

## DISCUSSION

### 1. Judge's Considerations in Decision Number 40/Pid.B/2020/PN Wno

#### a. Juridical Analysis

Juridical considerations are judges' considerations based on juridical facts revealed in court and by law stipulated as matters that must be included in a decision, for example the indictment of the public prosecutor, criminal charges, statements of the accused, witness statements, evidence, and articles in criminal law regulations. Juridical considerations include:

Table 1. Juridical Analysis

Consideration of Juridical Judges	Related Article	Discussion
Public Prosecutor's Indictment	Article 14 letter d of the Criminal Procedure Code explains that making an indictment is one of the powers of the public prosecutor.	In this case the public prosecutor's indictment is in the form of an alternative indictment, where the alternative indictment is one of the forms of indictment. In judicial practice, alternative indictments are often referred to as mutually exclusive indictments or relative indictments or known as "optional" indictments. In
	Article 140 paragraph (1) of the Criminal Procedure Code, an indictment is made as soon	

<sup>7</sup> Undang-Undang Dasar 1945 Amandemen (Indonesia).

<sup>8</sup> Undang-Undang No. 39/1999 Tentang Pengadilan HAM, 1999.

	<p>as possible if the public prosecutor is of the opinion that prosecution can be carried out based on the results of the investigation.</p> <p>Article 143 paragraph (1) of the Criminal Procedure Code, which states that the public prosecutor shall transfer the case to the district court with a request to immediately try the case accompanied by an indictment</p> <p>Article 155 paragraph (2) of the Criminal Procedure Code, the indictment is read out at the start of the trial at the request of the presiding judge.</p>	<p>alternative indictments the judge can directly choose to determine which indictment is in accordance with the results of evidence at trial</p>
<p>Criminal Prosecution</p>	<p>Article 182 paragraph (1) letter a of the Criminal Procedure Code, that after the examination is declared complete, the public prosecutor submits a crime.</p>	<p>In case Number 40/Pid.B/2020/PN Wno, where the Public Prosecutor filed a criminal charge which in essence:</p> <ol style="list-style-type: none"> <li>1. Declare the Defendant ARVITA SARI WINDA ADI PRASTOWO Binti SURADI proven legally and convincingly guilty of committing the crime of "<i>intentional abortion</i>" as stipulated and punishable by crime in the indictment of Article 346 of the Criminal Code in accordance with the charges of the two Public Prosecutors;</li> <li>2. Sentenced prison sentence against the defendant ARVITA SARI WINDA ADI PRASTOWO Binti SURADI with a prison sentence of 2 (two) years and 6 (six) months reduced while the Defendant was in temporary detention by order for the Defendant to remain in detention;</li> <li>3. State the evidence in the form of:             <ol style="list-style-type: none"> <li>a. 1 (one) bed sheet with green, pink and yellow bloodstained motif, 1 (one) blank <i>cytotec drug strip</i> , several bloodstained tissues, 1 (one) medical card for RSKIA SADEWA in the name of ARVITA SARI WINDA ADI, NY NO 157762, 1 (one) ultrasound photo, 1 (one)</li> </ol> </li> </ol>

		<p>black plastic bag, 1 (one)                  green plastic bag, 1 (one)                  white plastic bag, 1 (one) used                  plastic pad, 1 (one) piece of                  purple blaster candy and 1                  (one) pack of spasmlal drug                  will be confiscated for                  destruction.</p> <p>b. One (1) green OPPO type A7                  cellphone with the number                  WA 088224189582, IMEI 1:                  866403044423837, IMEI 2:                  866403044423829 seized for                  destruction.</p> <p>4. Stipulates that the Defendant pay                  court fees of Rp. 2.000,- (two                  thousand rupiah)</p>
<p>Witness                  Statement</p>	<p>Article 1 point 26 of the                  Criminal Procedure Code                  states that a witness is a                  person who can provide                  information for the purposes                  of investigation, prosecution                  and trial regarding a criminal                  case that he himself witnessed                  and experienced himself.</p> <p>Article 184 paragraph (1) of                  the Criminal Procedure Code,                  which states that (1) valid                  evidence is:</p> <ol style="list-style-type: none"> <li>1. Witness statement;</li> <li>2. Expert statement;</li> <li>3. Letter;</li> <li>4. Instruction;</li> <li>5. Defendant's statement.</li> </ol> <p>Article 185 of the Criminal                  Procedure Code contains:</p> <ol style="list-style-type: none"> <li>(1) Witness testimony as                      evidence is what the                      witness stated in court.</li> <li>(2) The testimony of a witness                      alone is not enough to                      prove that the defendant is                      guilty of the actions he is                      charged with.</li> <li>(3) The provisions referred to                      in paragraph (2) do not                      apply if accompanied by                      other valid evidence.</li> <li>(4) The statements of several                      independent witnesses                      regarding an incident or</li> </ol>	<p>That in case Number                  40/Pid.B/2020/PN Wno, the testimony                  of witnesses who had taken an oath                  according to religious procedures was                  heard, namely :</p> <ol style="list-style-type: none"> <li>1) Witness 1, Andang Ariwibowo</li> <li>2) Witness 2, Mustofa Taufik</li> <li>3) Witness 3, Septian Aditya Putra</li> <li>4) Witness 4, Sarwanto</li> <li>5) Witness 5, Sumiyen</li> <li>6) Witness 6, Sukidi</li> <li>7) The 7th witness, Suradi</li> <li>8) The 8th witness, Welas Windari</li> <li>9) 9th Witness (Expert Witness) , dr.                  D. Aji Kadarmo, SpFM, DFM.</li> </ol>

	<p>situation can be used as a legal means of evidence if the statements of the witnesses relate to one another in such a way as to justify the existence of a particular event or situation.</p> <p>(5) Neither opinions nor conjectures, which are derived from mere thinking, do not constitute expert testimony.</p> <p>(6) In assessing the truth of a witness' testimony, the judge must seriously pay attention to:</p> <ol style="list-style-type: none"> <li>1. Correspondence between the testimony of one witness and another;</li> <li>2. Correspondence between witness testimony and other evidence;</li> <li>3. Reasons that may be used by witnesses to give certain statements;</li> <li>4. The way of life and decency of witnesses as well as everything that in general can influence whether or not the testimony can be trusted.</li> </ol> <p>(7) Statements from witnesses who are not sworn in, even if they are in agreement with the others, are not evidence, but if the statements are in accordance with the statements from witnesses who are sworn in, they can be used as additional legal evidence.</p>	
<p>Defendant's Statement</p>	<p>Article 184 paragraph (1) of the Criminal Procedure Code, which states that (1) valid evidence is:</p> <ol style="list-style-type: none"> <li>1. Witness statement;</li> <li>2. Expert statement;</li> <li>3. Letter;</li> <li>4. Instruction;</li> <li>5. Defendant's statement.</li> </ol>	<p>Whereas in case Number 40/Pid.B/2020/PN Wno Inin the defendant has given his statement in court, that the defendant has indeed carried out the act of aborting the defendant's content on Friday 31 January 2020 at around 01.25 WIB at the defendant's workplace at Counter Alasca Celuller on Jalan Affandi</p>

	<p>Article 189 of the Criminal Procedure Code, which states:</p> <ol style="list-style-type: none"> <li>1. The defendant's statement is what the defendant stated in court about the actions he committed or that he himself knew or experienced.</li> <li>2. The defendant's statement given outside the trial can be used to help find evidence at trial, as long as the statement is supported by valid evidence insofar as it concerns the matter against which he is charged.</li> <li>3. The testimony of the accused can only be used against himself.</li> <li>4. The defendant's statement alone is not enough to prove that he is guilty of the act he was charged with, but must be accompanied by other evidence.</li> </ol>	<p>Depok Sleman Yogyakarta</p>
<p>Evidence</p>	<p>Article 38 paragraph (1) of the Criminal Procedure Code, Evidence is then referred to as confiscated objects when the objects/evidence are confiscated by investigators based on a permit from the chairman of the local district court.</p> <p>Article 39 paragraph (1) of the Criminal Procedure Code, which states that those subject to confiscation are:</p> <ol style="list-style-type: none"> <li>a. Objects or bills of the suspect or defendant which are wholly or partly alleged to have been obtained from a criminal act or as the result of a criminal act;</li> <li>b. Objects that have been used directly to commit a crime or to prepare it;</li> <li>c. Objects used to obstruct the investigation of criminal</li> </ol>	<p>The definition of "means of evidence" in Article 197 paragraph (1) of the Criminal Procedure Code also includes everything that can be used as evidence, which includes both evidence and evidence.</p> <p>Thus, the use of the term means of proof in Article 197 paragraph (1) of the Criminal Procedure Code, which includes evidence and evidence, shows that evidence has an important position in the evidence system. However, there is no mention of the term evidence in Article 183 of the Criminal Procedure Code regarding the evidentiary system and the absence of provisions in the Criminal Procedure Code for special treatment of evidence, giving rise to the impression that evidence is merely additional evidence to evidence.</p> <p>The evidence in case Number 40/Pid.B/2020/PN Wno is as follows:</p> <ol style="list-style-type: none"> <li>1. 1 (one) bed sheet with green, pink</li> </ol>

	<p>acts;                  d. Objects specifically made or intended to commit a criminal act;                  e. Other objects that have a direct relationship with the crime committed.</p> <p>Article 40 of the Criminal Procedure Code that, in the event of being caught red-handed, investigators can confiscate objects and tools that are in fact or reasonably suspected to have been used to commit a crime or other objects that can be used as evidence.</p> <p>Article 181 paragraph (1): The head judge at trial shows the defendant all of the evidence and asks him if he knows those objects.</p> <p>Article 197 paragraph (1) letter d of the Criminal Procedure Code includes evidence and evidence.</p> <p>Article 203 paragraph (2): In the Brief Examination Procedure, the public prosecutor shall appear before the defendant along with witnesses, experts, interpreters and the necessary evidence.</p> <p>Regulation of the Indonesian National Police Number 10 of 2010 concerning Procedures for Managing Evidence in the Indonesian National Police, in Article 1 number 5 Perkap 10/2010 states, Evidence is movable or immovable, tangible or intangible objects that have been confiscated by investigators for the purpose of examination at the level of investigation, prosecution and examination before the court.</p>	<p>and yellow bloodstained motif, 1 (one) blank <i>cytotec drug strip</i> , several bloodstained tissues, 1 (one) medical card for RSKIA SADEWA in the name of ARVITA SARI WINDA ADI, NY NO 157762, 1 (one) ultrasound photo, 1 (one) black plastic bag, 1 (one) green plastic bag, 1 (one) white plastic bag, 1 (one) used plastic pad, 1 (one) piece of purple blaster candy and 1 (one) pack of spasminal drug will be confiscated for destruction.</p> <p>2. 1 (one) green OPPO type A7 cellphone with the number WA 088224189582, IMEI 1 : 866403044423837, IMEI 2 : 866403044423829 seized for destruction</p>
Articles in criminal regulations	Article 346 of the Criminal Code, " <i>Women who intentionally cause the death or death of their womb or</i>	In case Number 40/Pid.B/2020/PN Wno, the defendant was proven legally and convincingly guilty of committing the crime of " <i>intentionally aborting</i> "

	<i>order other people to do so, are sentenced to a maximum of four years in prison".</i>	<i>content", as stipulated and punishable by punishment in the indictment of Article 346 of the Criminal Code in accordance with the second indictment of the Public Prosecutor.</i>
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**b. Non Juridical Analysis**

Non-judicial considerations can be seen from the background or reasons for the defendant's actions and the consequences of the defendant's actions. The judge's considerations are based on circumstances that are not regulated by law, but are experienced by the perpetrator of the crime.<sup>9</sup> This is known as a non-judicial consideration.

In this case the basis for the judge's non-judicial considerations in decision Number 40/Pid.B/2020/PN Wno is:

Table 2. Non Juridical Analysis

<b>Consideration of Non Juridical Judges</b>	<b>Discussion</b>
The reasons for the defendant's actions	The defendant did this because the defendant and his girlfriend were involved in an argument and the defendant had the intention to abort the fetus in the defendant's womb. At that time the defendant was not bound by a husband and wife (marriage) relationship with his girlfriend, but the defendant had tested positive for being pregnant
As a result of the defendant's actions	The defendant did this because the defendant and his girlfriend were involved in an argument and the defendant had the intention to abort the fetus in the defendant's womb. At that time the defendant was not bound by a husband and wife (marriage) relationship with his girlfriend, but the defendant had tested positive for being pregnant

So it can be concluded based on the results of research on literature studies from related documents, the decision on case number 40/Pid.B/2020/PN Wno which stated that the defendant was legally and convincingly proven according to law to have violated Article 346 of the Criminal Code as well as the things that were revealed in court has fully complied with the elements of Article 346 of the Criminal Code. Therefore, the judge handed down a sentence of 1 (one) year and 10 (ten) months and reduced the detention period. It was felt that the trial procedures in case number 40/Pid.B/2020/PN Wno were in accordance with the provisions of the law, however the sentence handed down by the judge was in accordance with the maximum sentence of Article 346 of the Criminal Code. This means that in order to impose a sentence on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant<sup>10</sup>.

The panel of judges at the Wonosari District Court, by looking at the facts at trial, stated that the Defendant Arvita Sari Winda Adi Prastowo Binti Suradi was legally and convincingly guilty of committing the crime of "intentionally aborting a womb", after all the elements contained in Article 346 Criminal Code fulfilled. Because the elements in Article 346 of the Criminal Code are fulfilled as charged in the second alternative indictment.

That in the trial the Panel of Judges did not find justification or excuses that could eliminate the unlawful nature of the Defendant so that the Defendant's actions must be held

<sup>9</sup> A Fadhilah, 'Tinjauan Yuridis Implementasi Pemidanaan Terhadap Tindak Pidana Aborsi Oleh Paramedis (Studi Kasus Di Pengadilan Negeri Karanganyar)' (Universitas Sebelas Maret, 2008).

<sup>10</sup> Putri Nadya Rusman, 'Analisis Putusan Hakim Terhadap Tindak Pidana Pelaku Aborsi (Studi Kasus Putusan Nomor 208/Pid.Sus/2018/PN.Tar)' (Universitas Borneo Tarakan, 2021).

accountable to him<sup>11</sup>. Therefore, the Defendant is able to take responsibility, the Defendant must be found guilty of the crime charged against the Defendant and sentenced, as stipulated in Article 346 of the Criminal Code with imprisonment for 1 (one) year and 10 (ten) months. The sentence handed down by the Panel of Judges was lighter than the demands of the Public Prosecutor, namely 2 (two) years and 6 (six) months.

## **2. Judgment on Case Number 40/Pid.B/2020/PN Wno In terms of positive law in Indonesia**

### **a. According to the 1945 Constitution**

Based on the 1945 Constitution, this shows that the right to live and maintain life is the same right for all people, especially Indonesian citizens, from birth. No one can buy or take another person's life for any reason. If anyone takes the life of another person without reason, that person must be punished according to the law. In the description of the formulation of Article 28A which regulates the right of a person or child to live. The child referred to here is every individual who is not yet 18 years old, including the fetus that is still in the womb. Therefore, the state is responsible for maintaining and protecting the right to life of every citizen. To do this, law enforcers will use state tools to act in cases of violations of the right to human life.

### **b. According to the Criminal Code**

Abortion as an act of abortion, along with the provisions contained in the Criminal Code. The following is an explanation of the Articles:

The following is an explanation of the Articles above:

#### 1) Article 346

*"A woman who deliberately aborts or kills her womb or orders someone else to do so, is punishable by a maximum imprisonment of four years."*

When looking at the elements of Article 346 of the Criminal Code, it can be concluded that those who can be subject to punishment according to Article 346 of the Criminal Code are only pregnant women or pregnant women themselves.

#### 2) Article 347

a) Any person who with deliberate intent aborts or kills the womb of a woman without her consent, shall be punished by a maximum imprisonment of twelve years.

b) If said act results in the death of the said woman, he shall be punished by a maximum imprisonment of fifteen years.

#### 3) Article 348

a) Any person who with deliberate intent aborts or kills a woman's womb with her consent, shall be punished by a maximum imprisonment of five years and six months.

b) If said act results in the death of the woman, it shall be punished by a maximum imprisonment of seven years. Based on the description of the formulation of the Articles above which regulate abortion, it means that for whatever reasons other than medical reasons one cannot perform or perform an abortion. If we look closely at the provisions of the Criminal Code, it is based on an idea or paradigm that a child who is still in the womb is a legal subject and therefore has the right to receive legal protection. As for those who can be subject to criminal sanctions related to the act of abortion, namely women who abort their own wombs and also those who are involved in the abortion process such as medical personnel (doctors, midwives or pharmacists).

### **c. According to Law Number 36 of 2009 concerning Health Law**

If you understand the medical meaning of abortion or abortion is an abortion or miscarriage. Miscarriage itself means the end of pregnancy, before the fetus can live independently outside the womb with a limit of 20 weeks of gestation and the weight of the

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<sup>11</sup> Pradhita Rika Nagara, 'Pertimbangan Hukum Oleh Hakim Dalam Menjatuhkan Putusan Terhadap Anak Yang Melakukan Penyalahgunaan Narkotika' (Universitas Atmajaya).

fetus that comes out is less than 500 grams. Meanwhile, Article 76 point (a) of Law Number 36 of 2009 concerning Health explains that abortion can only be performed before 6 (six) weeks of pregnancy, counting from the first day of the last menstruation.

Based on the provisions of Article 75 of Law Number 36 of 2009 concerning Health which consists of 2 (two) paragraphs, Article 75 paragraph (1) states that "Everyone is prohibited from having an abortion", but Article 75 paragraph (2) states that "The prohibition as referred to in paragraph (1) may be excluded based on:

- 1) Indications of medical emergencies detected at an early age in pregnancy, whether those that threaten the life of the mother and/or fetus, suffer from severe genetic diseases and/or congenital defects, or those that cannot be repaired, making it difficult for the baby to live outside the womb; or
- 2) Pregnancy as a result of rape which can cause psychological trauma to the rape victim.

Furthermore, in Article 75 paragraph (3) it states that:

*"The actions referred to in paragraph (2) can only be carried out after going through pre-action counseling and/or counseling and ending with post-action counseling carried out by a competent and authorized counselor".*

What is meant by "counselor" in this provision is any person who has a certificate as a counselor through education and training. Those who can become counselors are doctors, psychologists, community leaders, religious leaders, and everyone who has an interest and has the skills to do so. [Explanation of the Law of the Republic of Indonesia Number 36 of 2009 concerning Health, CHAPTER II Article by Article]

Each country has regulations or laws that prohibit artificial abortion (abortus provocatus), but this is not absolute. In Indonesia itself based on the laws and regulations abortion provocatus is considered a crime, where this crime is declared a crime if the abortion carried out is fatal.<sup>12</sup>

Then in Article 194 of the Health Act explains that

*"Any person who intentionally has an abortion not in accordance with the provisions referred to in Article 75 paragraph (2) shall be subject to imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)".*

So therefore Article 75 of Law Number 36 of 2009 concerning Health which contains abortion provocatus medicinalis can still be applied in Indonesia, although basically the rules are different from the formulation of abortion provocatus criminalis according to the Criminal Code. Article 75 of Law Number 36 of 2009 concerning Health clearly states that this regulation prohibits abortion except for the type of abortion provocatus therapeuticus/medicinalis. The regulation on abortion in this health law regarding abortions carried out by rape victims indicates that it can cause psychological trauma to the mother<sup>13</sup>. The criminal provisions regarding provocatus abortion in the regulation of Law Number 36 of 2009 concerning Health are considered good because they contain general provisions and special precautions that can reduce the number of abortion crimes. The criminal threat that is considered quite severe, with the aim that the abortionist becomes courageous and does not repeat the act again, besides that the purpose of the regulation is to be a special prevention solution, namely efforts to prevent people who have abortion provocatus from repeating these actions.<sup>14</sup>

#### **d. Draft Law on Mother and Child Welfare**

<sup>12</sup> Ketut Siregig Rahmawati, Deti. and Zainudin, 'Pertimbangan Hakim Dalam Menjatuhkan Pidana Terhadap Pelaku Tindak Pidana Pembunuhan Berencana', *Widya Yuridika: Jurnal Hukum*, 4.1 (2021) <<https://media.neliti.com/media/publications/548903-none-ae0bfa92.pdf>>.

<sup>13</sup> Z. H. Al Hamid, 'Tinjauan Yuridis Terhadap Tindak Pidana Aborsi (Studi Kasus Putusan Nomor : 417/Pid.B/2017/PN.MKS)' (Universitas Hasanuddin Makassar, 2017).

<sup>14</sup> M. H. F Salewangeng, 'Tinjauan Kriminologis Terhadap Abortus Provocatus Criminalis Oleh Anak (Studi Kasus Di Kabupaten Bone 2018-2020)' (Universitas Hasanuddin Makassar, 2021).

Welfare of Mother and Child is a unit that influences each other. A child can grow well, healthy, smart, creative and productive. It is impossible to be born unless it is from a mother whose health and well-being is good and guaranteed. As regulated in Article 9 paragraph (1) regarding the Rights of the Child. As is the case in Article 9 paragraph (1) letter a which states that children have the right to live, grow and develop optimally. In addition, in Article 10 which mentions the obligations of the mother. Article 10 paragraph (1) letters a and b state that:

- 1) Maintain personal health during pregnancy;
- 2) Maintaining the survival and growth and development of children since they are still in the womb.

Based on the above formulation, it is clear that abortion provocatus criminalis violates the above provisions. Abortion in this case means reducing the child's life expectancy, and not giving the child the right to live.

#### **e. Government Regulation Number 61 of 2014 concerning Reproductive Health**

In addition to the Criminal Code (KUHP)<sup>15</sup> and Law Number 36 of 2009 concerning Health which regulate abortion, the Government also issued Government Regulation Number 61 of 2014 concerning Reproductive Health with the aim of ensuring the health of healthy reproductive organs. Abortion is one part of medical action related to the goals of reproductive health. In this Government Regulation on Reproductive Health, the highlight is the legalization of abortion for rape victims. This is regulated in the provisions of Chapter IV concerning indications of medical emergencies and rape as a prohibition on abortion. It has been explained that abortion in this Regulation is permitted on the grounds of medical emergencies and pregnancy due to rape, which has been regulated in Articles 31 to Article 39 of Government Regulation Number 61 of 2014<sup>16</sup> concerning Health. Reproduction.

Article 31

- 1) Abortion can only be done based on:
  - a) medical emergency indications; And
  - b) Pregnancy as a result of rape.
- 2) The act of abortion as a result of rape as referred to in paragraph 1) letter b can only be carried out if the gestational age is no longer than 40 (forty) days from the first day of the last menstrual period.

Government Regulation Number 61 of 2014 concerning Reproductive Health which explains that in principle a country has the right to prohibit abortion, and these restrictions have been expressly stipulated in Law Number 36 of 2009 concerning Health. Where in the act of abortion in several medical conditions it is the only way that medical personnel can try to save the lives of mothers who experience health problems or serious complications occur in their pregnancies. Therefore, abortion based on Government Regulation Number 61 of 2014 concerning Reproductive Health allows abortion based on medical emergency indications or the result of rape only which is proven in accordance with the provisions in Article 34 and Article 35.

## **CONCLUSION**

1. Based on the results of the discussion of the problems above, the authors draw the following conclusions:

The basis for the judge's consideration in imposing a crime on the crime of abortion committed by Defendant Arvita Sari Winda Adi Prastowo Binti Suradi at the Wonosari District Court can be seen based on the legal basis used by the judge in imposing a sentence, namely Article 326 of the Criminal Code, whose elements are as follows following:

- a. Whoever.

<sup>15</sup> R Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP)* (Bogor: Politeia, 1991).

<sup>16</sup> Pemerintah Republik Indonesia, *Peraturan Pemerintah Nomor 61 Tahun 2014 Tentang Kesehatan Reproduksi*. (Lembaran Negara Republik Indonesia).

That what is meant by the element of "Whosoever" in this case is a legal subject who can be held responsible for the actions he has committed legally, especially according to criminal law and there is no reason to forgive and/or justify that can eliminate his punishment.

That at trial a legal subject or a defendant was present, namely Arvita Sari Winda Adi Prastowo Binti Suradi, whose identity had been mentioned before the trial, was submitted to the court because she had been charged with committing a crime and during the trial the defendant confirmed that identity was the identity of the defendant himself.

- b. Women who intentionally cause the death of their womb or order other people to do so.

That what is meant by women in this case is the pregnant woman herself, namely the Defendant Arvita Sari Winda Adi Prastowo Binti Suradi. In addition, what is meant by intention is the willingness to do or not to do actions that are prohibited or ordered by law.

The Panel of Judges in deciding this case by looking at all the facts at trial stated that the Defendant Arvita Sari Winda Adi Prastowo Binti Suradi was legally and convincingly guilty of committing the crime of "intentionally aborting a womb", after all the elements contained in Article 346 of the Criminal Code are fulfilled. Based on juridical considerations, namely the public prosecutor's indictment, witness statements, defendant statements, evidence, and articles in the criminal law regulations, as well as non-juridical considerations, namely the reasons for the defendant's actions and the consequences of the defendant's actions. Based on these considerations the judge handed down a decision on the defendant Arvita Sari Winda Adi Prastowo Binti Suradi for 1 (one) year 6 (six) months.

2. The legal arrangements for the crime of abortion in this case are very clearly stated in the Criminal Code, Law Number 36 of 2009, the MCH Bill and Government Regulation Number 61 of 2014 concerning Reproductive Health. In addition, the criminal act of abortion has violated the provisions of Article 28A of the 1945 Constitution which states that every person has the right to live and has the right to defend his life and existence. Whereas the element "a woman who deliberately causes the death of her womb or orders someone else to do so" has been fulfilled in Article 436 of the Criminal Code, then the defendant has been declared legally and convincingly proven to have committed the crime of abortion

## BIBLIOGRAPHY

- Aris Prio Agus Santoso, *Hukum Kesehatan* (Jakarta: Trans Info Media, 2020)
- Bukoting, M. F, Arten Mobonggi, and Selviyanti Kaawoan, 'Dampak Pergaulan Bebas Terhadap Peningkatan Angka Putus Sekolah Di Desa Kuala Utara Kecamatan Kaidipang Kabupaten Bolaang Utara', *PEKERTI: Jurnal Pendidikan Islam & Budi Pekerti*, 1.1 (2020) <<https://core.ac.uk/download/pdf/288186161.pdf>. >
- Dinas Kesehatan Pemerintah Yogyakarta, *Profil Kesehatan Tahun 2020 Kota Yogyakarta (Data Tahun 2019)* (Yogyakarta, 2020)
- Fadhilah, A, 'Tinjauan Yuridis Implementasi Pemidanaan Terhadap Tindak Pidana Aborsi Oleh Paramedis (Studi Kasus Di Pengadilan Negeri Karanganyar)' (Universitas Sebelas Maret, 2008)
- Hamid, Z. H. Al, 'Tinjauan Yuridis Terhadap Tindak Pidana Aborsi (Studi Kasus Putusan Nomor : 417/Pid.B/2017/PN.MKS)' (Universitas Hasanuddin Makassar, 2017)
- Kusmiati, M, Fikria Nur Ramadani, Malacca Nadia, and Resya Nursyam, 'Pendidikan Kesehatan: Bahaya Pergaulan Bebas Remaja', *Jurnal Pemberdayaan Dan Pendidikan*

- Lombok, Bella Ester Neva, and Dkk., 'Abortus Provocatus Terhadap Korban Perkosaan Menurut Peraturan Perundang-Undangan Di Indonesia', *Lex Privatum*, 6.11 (2021), 131
- Nagara, Pradhita Rika, 'Pertimbangan Hukum Oleh Hakim Dalam Menjatuhkan Putusan Terhadap Anak Yang Melakukan Penyalahgunaan Narkotika' (Universitas Atmajaya) Pemerintah Republik Indonesia, *Peraturan Pemerintah Nomor 61 Tahun 2014 Tentang Kesehatan Reproduksi*. (Lembaran Negara Republik Indonesia)
- , *Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan Reproduksi* (Indonesia: Lembaran Negara Republik Indonesia, 2009)
- Rahmawati, Deti., Ketut Siregig, and Zainudin, 'Pertimbangan Hakim Dalam Menjatuhkan Pidana Terhadap Pelaku Tindak Pidana Pembunuhan Berencana', *Widya Yuridika: Jurnal Hukum*, 4.1 (2021) <<https://media.neliti.com/media/publications/548903-none-ae0bfa92.pdf>>
- Rusman, Putri Nadya, 'Analisis Putusan Hakim Terhadap Tindak Pidana Pelaku Aborsi (Studi Kasus Putusan Nomor 208/Pid.Sus/2018/PN.Tar)' (Universitas Borneo Tarakan, 2021)
- Salewangeng, M. H. F, 'Tinjauan Kriminologis Terhadap Abortus Provocatus Criminalis Oleh Anak (Studi Kasus Di Kabupaten Bone 2018-2020)' (Universitas Hasanuddin Makassar, 2021)
- Soesilo, R, *Kitab Undang-Undang Hukum Pidana (KUHP)* (Bogor: Politeia, 1991)
- Undang-Undang Dasar 1945 Amandemen* (Indonesia)
- Undang-Undang No. 39/1999 Tentang Pengadilan HAM*, 1999