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Criminal Liability for Abortion by Midwives

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Abstract:

The crime of abortion as a prohibited act, it is appropriate that the perpetrators of the crime of abortion should be held accountable for their actions. However, even though these cases often occur, it is not known how the doctors or perpetrators are responsible for patients who are victims of abortion, it is difficult to prove it because of the openness of doctors and other medical personnel to the general public. In Indonesia itself, it is strictly forbidden to carry out an abortion because it is contrary to existing norms. The regulation regarding the prohibition of criminal abortion is regulated in the Criminal Code in Articles 346 to 349. In Indonesian positive law, the regulation of abortion is contained in two laws, namely the Criminal Code (KUHP) Articles 299, 346, 346, 347, 348, and 349 and regulated in Law no. 36 of 2009 concerning Health Articles 75, 76, 77. There are differences between the Criminal Code (KUHP) and Law no. 36 of 2009 concerning Health in regulating abortion issues. The Criminal Code (KUHP) strictly prohibits abortion for any reason. In essence, every criminal act must consist of outward elements by the act, containing behavior and the consequences caused by it. Based on this, the principle of 'no criminal responsibility without guilt' refers to a process that requires errors that underlie the validity of legal statements for the reproach of the perpetrators of the crime. Therefore, the judge is obliged to examine and prove every element of the article indicted by the public prosecutor.

Keywords: Criminal liability, abortion, midwife

1. Introduction

In Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the 4th Amendment (UUD 1945), explicitly stipulates that the State of Indonesia is a state of law. As a state of law, it is hoped that all government actions in carrying out government in all sectors of social life, including handling cases of the crime of abortion, must be based on applicable legal provisions, referring to human rights, which according to the state Pancasila are reflected in the second principle, namely humanity, fair and civilized.

The case of abortion or abortion is not a new problem in Indonesia, for a long time there have been traditional medicines (herbs) that are efficacious to abort the womb. The practice of abortion is still a big problem in Indonesia and until now the practice of abortion is still often carried out by the younger generation, especially students. The incidence of criminal provocative abortion in Indonesia reaches 2.5 million cases per year, or 43 abortions for every 100 pregnancies and about 30% of abortion cases are carried out by residents aged 15-24 years. In a courtship relationship, the couple also engages in relationships that are usually done by married couples, which ultimately results in unwanted pregnancies. The unwanted pregnancy has a correlation with abortion cases where the unwanted pregnancy encourages abortion.

The risk of a relationship without a marriage bond is unwanted pregnancy, causing conflict for the perpetrators of a free lifestyle, namely to maintain their pregnancy or to abort their pregnancy (abortion), the increasing cases of pregnancies outside of marriage encourage certain people to tend to abort, as a solution to eliminate disgrace.

The debate about abortion has recently become more and more crowded because it is triggered by various events that have shaken the joints of human life. The life given to every human being is a human right that can only be revoked by the giver of that life. The problem of abortion (abortion) essentially cannot be separated from the values and religious norms that develop in Indonesian society, related to positive criminal law in Indonesia. This is because abortion that occurs today has become an actual thing, can happen everywhere and can be done by various groups, especially those who are not bound by marriage who experience pregnancy outside of marriage.

In the context of everyday life, the issue of abortion seems hidden and without turmoil. However, the practice of abortion carried out by irresponsible people continues in secret. Abortion cases are still widely found in the community, but only very few are processed at the court level, partly because law enforcers are still having difficulties in finding and collecting evidence in the field that affects law enforcement efforts in Indonesia. Many abortionists in Indonesia escape the law because they are not supported by sufficient preliminary evidence. Reality like this can be understood, because abortion does not have a real impact as the crime of murder which can be seen in real terms. Abortion both in process and the outcome is more personal, making it difficult to detect.

Abortions that occur in Indonesia cannot be separated from the assistance of health workers. According to Article 1 number 6 of Law Number 36 of 2009 concerning Health (Health Law), what is meant by a health worker is every person who devotes himself to the health sector and has the ability and or skills through education in the health sector which for certain types requires the authority to make health efforts. According to Article 23 of the Health Law, health workers are authorized to provide health services. In the elucidation of Article 23 of the Health Law, it is stated that the authority referred to in providing health services is the authority given based on education after going through the registration process and granting permission from the government in accordance with the legislation. In Article 11 paragraph (1) of Law Number 36 of 2014 concerning Health Workers (Health Personnel Law), which is the implementation of the provisions of Article 21 paragraph (3) of the Health Law, it is determined that health workers are grouped into:

- medical personnel;
- clinical psychology personnel;
- nursing staff;
- midwifery staff;
- pharmaceutical personnel;
- public health personnel;
- environmental health personnel;
- nutritionist;
- physical therapy personnel;
- medical technicians;
- biomedical engineering personnel;
- traditional health workers; and
- Other health workers.

In several cases of criminal abortion in Indonesia, abortion is not only committed by pregnant women but also by health workers, not a few of the perpetrators are midwives who are health workers. Although the midwife has the authority to perform certain medical actions, it must be for the right reasons. The authority of midwives in implementing midwifery practices is stated in the Regulation of the Minister of Health of the Republic of Indonesia Number 28 of 2017 concerning Permits and Implementation of Midwife Practices (Permenkes Number 28 of 2017), namely maternal health services, child health services, and women's reproductive health services and family planning.

2. Literature Review

2.1. Criminal Liability System in Positive Criminal Law

The discussion of criminal liability cannot be separated from the discussion of criminal acts. It is impossible for a person to be held accountable for being convicted if he does not commit a crime. The element of crime and error (intentional) is a central element in criminal law. The element of a criminal act is located in the objective field, followed by an element of against the law, while the element of criminal responsibility is a subjective element consisting of the ability to be responsible and the existence of errors (intentional and negligence).

2.2. Criminal Accountability System in the Criminal Code

The Criminal Code does not explicitly state the criminal responsibility system adopted. Several articles of the Criminal Code often mention errors in the form of intentional or negligence. So, whether intentional or negligent, there is no further information in the Criminal Code. From this unclear formulation, the question arises, were these articles deliberately made that way, with the intention of leading to limited liability (strict liability)? If it is true, without realizing it, the Criminal Code also adheres to exceptions to the principle of error, especially to articles of violation

2.3. Criminal Accountability System outside the Criminal Code

To find out legislative policies in establishing a system of criminal responsibility outside the Criminal Code, as an example in the legislation below:

- Law no. 7 Drt. 1955 concerning Economic Crimes;
- Law no. 22 of 1997 concerning Narcotics;
- Law no. 5 of 1997 concerning Psychotropics.
- Law No.23/1997 on Environmental Management.

The law was deliberately chosen specifically to deviate from the provisions of the Criminal Code and the General Criminal Procedure Code, especially regarding the subject of offenses and criminal liability, as well as proceedings in court. From each of these laws, it can be analyzed the tendency of the legislature in establishing a criminal accountability system in accordance with the socio-economic development of the community which has an impact on the development of crime.

In both civil law and common law countries, criminal liability is generally formulated in a negative way. This means that in Indonesian criminal law, like other civil law systems, the law actually formulates conditions that can cause the maker to be held accountable. The negative formulation of criminal liability can be seen from the provisions of Articles 44, 48, 49, 50, and 51 of the Criminal Code. All of them formulate things that can exclude the maker from being penalized. The negative formulation is related to the repressive function of criminal law. In this case, being accountable for someone in criminal law means being punished. Thus, the concept of criminal liability is a necessary condition for imposing a sentence on a criminal act. Criminal liability can be linked to the preventive function of criminal law. In this concept, the possibility must be opened for the maker as early as possible to fully realize the legal consequences of his actions. Thus, the consequences of a criminal act are a risk that the maker understands from the start. Criminal liability is the person's responsibility for the crime he has committed. Strictly speaking, what the person is responsible for is the crime he committed. So, the occurrence of criminal liability is because there has been a criminal act committed by someone. Criminal liability is essentially a mechanism built by criminal law to react to violations of the 'agreement to reject' a certain act. It can be said that a person cannot be accounted for and sentenced to a criminal if the person does not commit a crime. But even though the person has committed a crime, it is not always the person who will be punished. The maker of a crime will only be punished if the maker has a mistake in committing the crime. When a person is said to have made a mistake, is a matter of criminal liability.

3. Regulation of the Crime of Abortion

Regulation of the Crime of Abortion analysed in medical terms means the termination of pregnancy with the death and expulsion of the fetus at the age of less than 20 weeks with a fetal weight of less than 500 grams, i.e., before the fetus can live outside the womb independently. Article 75 paragraph (1) of the Health Law regulates the prohibition for everyone to have an abortion. Exceptions to this prohibition are regulated in Article 75 paragraph (2), namely based on: (a) indications of medical emergencies detected at an early age of pregnancy, both those that threaten the life of the mother and/or fetus suffering from severe genetic diseases and/or congenital defects, or those that do not. It can be repaired making it difficult for the baby to live outside the womb; or (b) pregnancy as a result of rape which causes psychological trauma to the victim of the rapist. This abortion can only be done after going through pre-action counselling and/or advice and ending with post-action counselling carried out by a competent and authorized counsellor (Article 75 paragraph (3) of the Health Law). The implementing regulations for this provision are regulated in Government Regulation Number 61 of 2014 concerning Reproductive Health. Abortion regulated in Article 75 paragraph (2) of the Health Law is a type of abortion *provocatus therapeuticus*, namely the intentional termination of pregnancy from the outside, usually carried out to save the life of the mother by doctors because pregnancy endangers the life of the mother. This type of abortion cannot be categorized as a crime because it has been excluded from the prohibition on abortion in the Health Law. Abortion which is categorized as a crime is abortion *provocatus criminalis*, which is an intentional and unlawful abortion. Against the law in the sense that it does not include an element of exception in Article 75 paragraph (2) of the Health Law so that it is a crime or criminal act which is regulated by the threat of punishment in the law. Criminal threats for perpetrators of illegal abortions are regulated in the Health Law and the Criminal Code. Article 194 of the Health Law stipulates that anyone who knowingly has an abortion not in accordance with Article 72 paragraph (2) shall be sentenced to a maximum imprisonment of 10 years and a maximum fine of Rp. 1 billion rupiah. This provision can be applied to doctors, other health workers, and pregnant women who intentionally carry out illegal abortions. The Criminal Code regulates the crime of abortion in Articles 299 and Articles 346 to 349. Based on these provisions, those who may be subject to punishment are women who are pregnant, perpetrators other than pregnant women, and people who intentionally treat or order an abortion. For pregnant women who have an abortion, either by themselves or by ordering someone else to do it, Article 346 of the Criminal Code can be imposed. For perpetrators other than pregnant women, intentionally aborting the womb without the consent of the pregnant woman, they are threatened with Article 347 paragraph (1) of the Criminal Code and if the pregnant woman experiences death is threatened with Article 347 paragraph (2) of the Criminal Code. If the act of an abortion is carried out by an actor other than a pregnant woman with the consent of the pregnant woman, Article 348 paragraph (1) of the Criminal Code is imposed. If abortion causes death for pregnant women, it is threatened with Article 348 paragraph (2) of the Criminal Code. The difference from the application of Articles 347 and 348 of the Criminal Code is in the consent of pregnant women and their punishment. If the perpetrators other than pregnant women are health workers (doctors, nurses, midwives, pharmacists, etc.) they can be subject to Article 349 of the Criminal Code. Article 349 is more severe in terms of punishment, which is added by a third of the sentence stipulated in Article 347 and Article 348 of the Criminal Code. For people who treat or order to treat so that an abortion occurs, it can be subject to Article 299 of the Criminal Code. The regulations in the Health Law and the Criminal Code have given strict and fairly high criminal threats when viewed from the duration of the punishment for perpetrators of the crime of abortion. The regulation has also accommodated criminal sanctions for perpetrators involved in the crime of abortion.

4. Types of Abortion Crime

In general, abortion (abortion) can be divided into two types, namely artificial or intentional abortion (*provocatus abortion*) and spontaneous abortion (*spontaneous abortion*). *Abortus provocatus* is a Latin term that is officially used in medical and legal circles, which means intentionally ending the life of the fetus in the womb of a pregnant woman. Another definition of abortion *provocatus* is the termination or expulsion of the results of pregnancy prematurely. In other words, 'expulsion' means that the expulsion of the fetus is intentional with human intervention, either through mechanical

means, drugs or other means. Abortusprovocatus is divided into abortion provocatusmedicalis and abortion provocatuscriminalis. Abortusprovocatusmedicalis is the intentional termination of pregnancy (termination) for medical reasons. This practice is considered, justifiable, and justified by law. As for abortion provocatuscriminalis, namely termination of pregnancy or abortion that violates the medical code of ethics, violates religious law, and violates the law (criminal).

In contrast to spontaneous abortion, the womb of a pregnant woman who died spontaneously. For that it is necessary to distinguish between abortion and miscarriage. Abortion is done intentionally, while miscarriage occurs accidentally. To denote an abortion, the term often used today is abortion.

In terms of many kinds of abortion that can be explained, C.B. Kusmaryanto, describes the various types of abortion, as follows:

- Abortion (Procured Abortion / Prvocatus Abortion / Induced Abortion)
- Miscarriage/ Miscarrange
- Therapeutic/Medical Abortion
- Criminal Abortion
- Eugenetic Abortion
- Abortion direct - indirect
- Selective Abortion
- Embryo Reduction
- Partia Birth Abortion

Abortion (Procured Abortion / Abortion Prvocatus Induced Abortion) is the termination of pregnancy results from the uterus before the fetus can live outside the womb.

Miscarrange is the cessation of pregnancy before the baby is alive outside the womb (viability), which means the spontaneous loss of the fetus in pregnancy before the gestational age reaches 20 weeks. Most miscarriages are caused because the fetus is not able to develop normally. More than 50% of miscarriages/miscarriages are associated with chromosomal abnormalities.

Therapeutic Medical Abortion is an abortion performed by a doctor on the basis of medical indications, that is, if the abortion is not taken, it will endanger the life of the mother. Therapeutic Medical Abortion is an abortion carried out with medical indications, meaning termination of pregnancy with medical indications to save the life of the mother.

Criminal Abortion is an abortion that occurs because of actions that are not legal or not based on medical indications, for example abortion carried out in order to eliminate the fetus as a result of sexual relations outside of marriage. In general, the definition of criminal abortion is an early birth before the baby in time can live alone outside the womb. Meanwhile, legally, criminal abortion is any termination of pregnancy before the products of conception are delivered, without taking into account the age of the baby in the womb and the fetus being born dead or alive. Based on this understanding, there is an element of intentional abortion. That is, an act or action taken so that the womb is born prematurely.

Eugenetic abortion is the termination of pregnancy to avoid the birth of a baby with a birth defect or a baby who has a genetic disease. Eugenism is an ideology that is applied to produce only superior offspring.

Direct abortion is an action (medical intervention) whose purpose is to directly kill the fetus in the mother's womb. Meanwhile, indirect abortion is an action (medical intervention) that results in abortion, even though the abortion itself is not intended and is not the goal in that action.

Selective abortion is termination of pregnancy because the fetus does not meet the desired criteria. Most of these abortions are carried out by women who carry out a 'pre-natal diagnosis' which is a diagnosis of the fetus when it is still in the womb.

Embryo Reduction (embryo reduction) is where the fetus is aborted by leaving only one or two fetuses, for fear of experiencing developmental delays, or even unhealthy development.

Partia Birth Abortion is a political/legal term which in medical terms is known as dilation and extraction. This method is first of all by giving drugs to pregnant women, the aim is that the cervix opens prematurely. The next action is to use a special tool, the doctor rotates the baby's position, so that the legs come out first. Then the baby is pulled out, but not completely, so that the baby's head remains in the mother's body. While inside, the doctor stabbed the baby's head with a sharp instrument. And suck the baby's brain until the baby dies. After that just sucked out.

The abortion in medical science is divided into two groups as follows:

- Spontaneous or scientific abortion
- Provocatus Abortion.

Spontaneous or scientific abortion is an abortion that occurs by itself without any external influence, either mechanical or medical factors. For example, because sperm or egg cells are not of good quality, or because there is a uterine deformity. It can also be caused by diseases, such as malaria. Spontaneous abortion can also occur because the mother is pregnant young, while she is doing heavy work or the condition of the womb is not strong in the womb because the woman who is too young or too old becomes pregnant.

Provocatus abortion is a type of abortion that is carried out intentionally and made by someone with a specific purpose. Provocatus abortion is basically divided into 2 parts, namely, as follows:

- Provocatusmedicalis abortion. That is abortion that occurs because of human actions. It can happen either because it is driven by medical reasons, for example because a pregnant woman suffers from an illness. Provocatus abortion can also be done at a critical time to help the soul of the mother, the pregnancy needs to be terminated, for example in pregnancy outside the womb, severe heart disease, severe TB disease, high blood

pressure, breast cancer, cervical cancer. Indications for abortion provocatus therapeuticum must be determined by at least two specialist doctors, one from an obstetrician and the other from an internist or a cardiologist.

- Abortion Provocatus Criminalis. This is an abortion that is done intentionally, either by the mother or by someone else with the consent of the pregnant mother. This is done for certain reasons, such as being embarrassed to be pregnant because of getting pregnant out of wedlock. This abortion is usually carried out for the benefit of the perpetrator, whether it is from a woman who aborts her womb or a person who performs an abortion such as a medical doctor or performed by a traditional birth attendant who will only seek profit.

5. Abortion in the Criminal Code and the Health Law

Deliberate abortion by violating various legal provisions (abortion provocatus criminalis) contained in the Criminal Code (KUHP) adhering to the 'illegal without exception' principle is considered very burdensome for paramedics in carrying out their duties. This means that the Criminal Code does not distinguish between Abortion Provocatus Therapeuticus and Abortion Provocatus Criminalis. All are abortions, regardless of the reasons and constitute an act that can be subject to criminal sanctions.

The Criminal Code qualifies this type of abortion as a crime against life and regulates abortion in Article 299, Article 346, Article 347, Article 348, and Article 349.

Article 299 of the Criminal Code determines as follows:

- Any person who intentionally treats a woman or orders her to be treated, with notification or hope that because of this treatment, her pregnancy can be aborted, shall be punished by a maximum imprisonment of four years or a maximum fine of three thousand rupiahs.
- If the guilty person does so for profit, or makes the act a quest or habit, or if he is a physician, midwife, or pharmacist; the penalty can be increased by one third.
- If the guilty party commits such an act, in carrying out the search, his right to carry out the search may be revoked.

The act in Article 299 of the Criminal Code is an act similar to abortion, but not with an affirmation that there must be a living womb, it is not even necessary that a woman is actually pregnant. Only if a woman is given hope that a possible pregnancy will be terminated with this treatment. Thus Article 299 of the Criminal Code is very preventive in nature to be able to more effectively eradicate abortion.

Article 346 of the Criminal Code determines as follows:

A woman who intentionally aborts or terminates her pregnancy or orders another person to do so, is threatened with a maximum imprisonment of four years.

In Article 346 of the Criminal Code the initiative to abort a pregnancy comes from the woman which means that those who can be prosecuted for committing a crime according to Article 346 of the Criminal Code are only women who abort their own womb, while the meaning of ordering someone else in the context of Article 346 of the Criminal Code is essentially different from the meaning of ordering someone else to do something. In the context of Article 55 of the Criminal Code. This is because, in the context of Article 55 of the Criminal Code, people who are ordered to do so cannot be punished, while in the context of Article 346 of the Criminal Code, those who are ordered to abort or terminate the pregnancy are still punished. In Article 346 of the Criminal Code, both those who order and those who are ordered to abort or terminate the womb of a woman are equally liable to be punished. In this case, the person who orders to abort or terminate the pregnancy shall be punished under Article 346 of the Criminal Code, while the person who is ordered to abort or terminate the pregnancy shall be punished under Article 348 of the Criminal Code.

Article 347 of the Criminal Code stipulates as follows:

- Whoever intentionally aborts or terminates the womb of a woman without her consent, shall be punished by a maximum imprisonment of four years.
- If the act causes the death of the woman, she shall be subject to a maximum imprisonment of fifteen years.

Based on the formulation of Article 347 of the Criminal Code, that the act of aborting or killing the womb is carried out by other people, not by the woman who is pregnant herself. This is different from the act of aborting or killing the womb in Article 346 of the Criminal Code where the perpetrator can be a woman who is pregnant herself or someone else. In the context of Article 347 of the Criminal Code, another person who aborts or kills a woman's womb is carried out without the consent of the pregnant woman herself.

Article 348 of the Criminal Code determines as follows:

- Whoever deliberately aborts or terminates the womb of a woman with his consent, shall be punished by a maximum imprisonment of five years and six months.
- If the act results in the death of the woman, she shall be subject to a maximum imprisonment of seven years.

Abortion or killing of the womb as regulated in Article 348 of the Criminal Code occurs with the consent of the pregnant woman. Approval in Article 348 of the Criminal Code implies that the pregnant woman agrees or wants the death or death of her womb. Thus, the pregnant woman herself is guilty of committing a crime in Article 346 of the Criminal Code, while other people who abort or kill with the consent are guilty of violating Article 348 of the Criminal Code.

Article 349 of the Criminal Code determines as follows:

If a physician, midwife or pharmacist assists in committing the crime referred to in Article 346, or commits or assists in committing one of the crimes described in Articles 347 and 348, the penalty specified in that article may be increased by one third and the right to conduct searches may be revoked. in which the crime was committed.

The type of crime regulated in Article 349 of the Criminal Code is abortion or the murder of a womb carried out by another person who has certain qualities such as a doctor, midwife or pharmacist who acts as the perpetrator or who

performs or acts as an assistant. Article 349 of the Criminal Code stipulates that a doctor, midwife or pharmacist who assists in committing a crime in Article 346, Article 347 and Article 348 of the Criminal Code may be subject to an additional one-third. This means that people who have these qualities if they help commit the crime of abortion as regulated in the Criminal Code can be sentenced to one-third higher than the maximum sentence imposed on the crime in question.

Thus, based on Article 346, Article 347, Article 348, and Article 349 of the Criminal Code, it follows that for whatever reasons other than medical reasons, women are not allowed to have an abortion. If you look closely, the provisions in the Criminal Code are based on a thought or paradigm that children who are still in the womb are legal subjects so they are entitled to legal protection. As for those who can be subject to criminal sanctions related to the act of abortion are women who abort their wombs themselves and also those who are involved in the process of abortion such as doctors, midwives or pharmacists.

Abortion (abortion) for whatever reason cannot be justified by criminal law norms or religious legal norms. This is because abortion is very contrary to the values that live in society, and is a murder committed against the fetus in the womb that should be protected. It is for this reason that the Criminal Code in Book II chapter XIX determines it as a crime against people's lives, especially the lives of fetuses.

Meanwhile, abortion in the Health Law as regulated in Article 75 of the Health Law contradicts the Criminal Code, where on the one hand it prohibits abortion for any reason and on the other hand it allows but on medical indications to save pregnant women and or fetuses.

Abortion in medical terms means termination of pregnancy with death and expulsion of the fetus at the age of less than 20 weeks with a fetal weight of less than 500 grams, i.e., before the fetus can live outside the womb independently. Article 75 paragraph (1) of the Health Law regulates the prohibition for anyone who has an abortion. Exceptions to this prohibition are regulated in Article 75 paragraph (2), namely based on:

- Indications of medical emergencies detected at an early age of pregnancy, both those that threaten the life of the mother and/or fetus suffering from severe genetic diseases and/or congenital defects, or which cannot be repaired making it difficult for the baby to live outside the womb; or
- pregnancy due to rape which causes psychological trauma for the victim of the rape. This abortion can only be done after going through pre-action counselling and/or advice and ending with post-action counselling carried out by a competent and authorized counsellor (Article 75 paragraph (3) of the Health Law).

Abortion as regulated in Article 75 paragraph (2) of the Health Law is a type of abortion *provocatus therapeuticus*, namely the intentional termination of pregnancy from the outside, usually carried out to save the life of the mother by doctors because pregnancy endangers the life of the mother. This type of abortion cannot be categorized as a crime because it has been excluded from the prohibition on abortion in the Health Law. Abortion which is categorized as a crime is abortion *provocatus criminalis*, which is an intentional and unlawful abortion. Against the law in the sense that it does not include an element of exception in Article 75 paragraph (2) of the Health Law so that it is a crime or criminal act which is regulated by the threat of punishment in the law.

Article 194 of the Health Law stipulates that any person who intentionally performs an abortion not in accordance with Article 72 paragraph (2) shall be punished with a maximum imprisonment of 10 years and a maximum fine of 1 billion rupiah. This provision can be applied to doctors, other health workers, and pregnant women who intentionally carry out illegal abortions.

Furthermore, Article 76 of the Health Law still provides limitations on abortion, that abortion can only be carried out:

- Before 6 (six) weeks of pregnancy is calculated from the first day of the last menstruation, except in the case of a medical emergency;
- by health workers who have the skills and authority who have certificates determined by the minister;
- with the consent of the pregnant woman concerned; with the husband's permission, except for rape victims; and health service providers who meet the requirements set by the Minister.

Regarding criminal sanctions for violations of Article 75 of the Health Law, Article 194 stipulates that anyone who intentionally has an abortion not in accordance with the provisions as referred to in Article 75 (2) shall be sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of 1,000,000,000.00 (one billion rupiah).

6. Definition of Midwives

A midwife is a person who has attended and completed midwifery education that has been recognized by the government and passed the examination in accordance with the applicable requirements, recorded (registration), legally licensed to practice. The Federation of International Gynaecologists and Obstetricians (FIGO) in 1991 and the World Health Organization (WHO) in 1992 defined a midwife as someone who has completed a state-recognized midwifery education program and has obtained qualifications and is licensed to practice midwifery in that country. Midwives must be able to provide the necessary supervision, care and advice to women during pregnancy, labor and the postpartum period, conduct deliveries on their own responsibility and care for new-borns and children.

Furthermore, in Article 1 of the Law of the Republic of Indonesia Number 4 of 2019 concerning Midwifery (Law on Midwifery) it is stated that a midwife is a woman who has completed a midwifery education program both domestically and abroad which is legally recognized by the Central Government and has fulfilled the requirements. to practice midwifery.

7. Duties and Responsibilities of Midwives

The midwifery profession in Indonesia is still faced with various kinds of obstacles, such as the uneven distribution of midwives and reaching all remote areas in Indonesia, as well as midwifery education which until now is mostly still in the type of vocational education which causes the development of the midwife profession to run very slowly. In terms of midwifery practice, there is still a mismatch between the authority and competence of the midwife. In addition, midwives as midwifery service providers need to be prepared for their ability to overcome the development of health problems in the community.

Based on Article 1 of the Minister of Health Regulation Number 28 of 2017, a midwife is a woman who has graduated from midwifery education who has been registered in accordance with the provisions of the legislation. Furthermore, the Law on Health Workers states that the midwife is one of the health workers. In the formulation of Article 1 of the Health Manpower Act, it is stated that a health worker is any person who devotes himself to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts.

Midwives in carrying out health services play a role as midwifery service providers, midwifery service managers, counsellors and counsellors for clients, educators, counsellors, and clinical facilitators, driving community participation and empowering women, as well as researchers. Midwifery services provided by midwives are based on knowledge and competence in the field of midwifery which is developed according to client needs.

Based on Article 46 paragraph (1) of the Midwifery Law, in carrying out midwifery practices, midwives are tasked with providing services that include:

- maternal health services;
- child health services; women's reproductive health services and family planning; implementation of tasks based on the delegation of authority; and/or; execution of tasks under certain conditions of limitations.

Furthermore, midwives as one of the health workers in carrying out their practice must be in accordance with the authority based on their competence. According to the explanation of Article 62 paragraph (1) letter c of the Health Manpower Law, what is meant by 'authority based on competence' is the authority to perform health services independently in accordance with the scope and level of competence, while the midwife's authority is as follows:

- performs maternal health services;
- performs child health services;
- Women's reproductive health services and family planning.

According to Article 49 of the Midwifery Law, in carrying out the task of providing maternal health services, midwives are authorized to:

- provides midwifery care in the pre-pregnancy period;
- provides midwifery care during normal pregnancy;
- provides midwifery care during labor and assist in normal delivery;
- provides midwifery care during the puerperium;
- performs emergency first aid for pregnant women, maternity, postpartum, and referrals; and
- carries out early detection of risk and complication cases during pregnancy, childbirth, postpartum, postpartum, and post-miscarriage care and follow up with referrals.

Midwives in carrying out the task of providing child health services as referred to in Article 46 paragraph (1) letter b, midwives are authorized to:

- provides midwifery care for new-borns, infants, toddlers, and pre-schoolers;
- provide immunization according to the Central Government program;
- monitoring the growth and development of infants, toddlers, and pre-schoolers as well as early detection of cases of complications, developmental disorders, and referrals; and
- provides emergency first aid to new-borns followed by referrals.

Furthermore, midwives in carrying out their duties provide women's reproductive health services and family planning. Midwives are authorized to communicate, inform, educate, counsel, and provide contraceptive services in accordance with the provisions of the applicable laws and regulations.

8. Responsibilities of Midwives in the Crime of Abortion

The midwifery profession in Indonesia is still faced with various kinds of obstacles, such as the uneven distribution of midwives and reaching all remote areas in Indonesia, as well as midwifery education which until now is mostly still in the type of vocational education which causes the development of the midwife profession to run very slowly. In terms of midwifery practice, there is still a mismatch between the authority and competence of the midwife. In addition, midwives as midwifery service providers need to be prepared for their ability to overcome the development of health problems in the community.

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Based on Article 46 paragraph (1) of the Midwifery Law in carrying out midwifery practices, midwives are tasked with providing services that include:

- maternal health services;

- child health services;
- women's reproductive health services and family planning;
- implementation of tasks based on the delegation of authority; and/or;
- execution of tasks under certain conditions of limitations.

Furthermore, midwives as one of the health workers in carrying out their practice must be in accordance with the authority based on their competence. According to the explanation of Article 62 paragraph (1) letter c of the Health Manpower Law, what is meant by 'authority based on competence' is the authority to perform health services independently in accordance with the scope and level of competence, while the midwife's authority is as follows:

- performs maternal health services;
- performs child health services;
- women's reproductive health services and family planning.

According to Article 49 of the Midwifery Law, in carrying out the task of providing maternal health services, midwives are authorized to:

- provides midwifery care in the pre-pregnancy period;
- provides midwifery care during normal pregnancy;
- provides midwifery care during labor and assist in normal delivery;
- provides midwifery care during the puerperium;
- performs emergency first aid for pregnant women, maternity, postpartum, and referrals; and
- carries out early detection of risk and complication cases during pregnancy, childbirth, postpartum, postpartum, and post-miscarriage care and follow up with referrals.

Midwives in carrying out the task of providing child health services as referred to in Article 46 paragraph (1) letter b, midwives are authorized to:

- provides midwifery care for new-borns, infants, toddlers, and pre-schoolers;
- provide immunization according to the Central Government program;
- monitoring the growth and development of infants, toddlers, and pre-schoolers as well as early detection of cases of complications, developmental disorders, and referrals; and
- provides emergency first aid to new-borns followed by referrals.

Furthermore, midwives in carrying out their duties provide women's reproductive health services and family planning. Midwives are authorized to communicate, inform, educate, counsel, and provide contraceptive services in accordance with the provisions of the applicable laws and regulations.

9. Conclusion

Indonesian legislation regulates abortion in two laws, namely in the Criminal Code (KUHP) and Law no. 36 of 2009 concerning Health. Abortion according to the Criminal Code (KUHP), according to laws or abortion is a crime, known as 'Abortus Provocatus Criminalis.' The act of abortion according to the Indonesian Criminal Code (KUHP) is categorized as a crime. Those who receive punishment are (a) the mother who had the abortion; (b) A doctor or midwife or traditional healer who assists in carrying out an abortion; (c) People who support abortion. Regarding criminal liability, there are several things that must be considered by the judge in making a decision, these rights are: There is an error, it is against the law, there is no reason for the abolition of the crime (reasons for forgiveness, reasons for justification).

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