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## Juridical Analysis of Criminal Sanctions Against Perpetrators of Abortion Crimes Reviewed from the Criminal Code and Health Law (Study of Decision Number 333/Pid.Sus/2021/PN Bks)

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**Abstract:** Most people consider illegal abortion to be very heinous, uncivilized, depriving potential human beings of their right to life, but on the other hand, an inner struggle occurs between a pregnant person to continue her pregnancy or not. The topic raised in this study is related to a pregnant woman, who may not want her pregnancy to then have an illegal abortion, to understand the criminal punishment given to the perpetrators of the crime of illegal abortion in accordance with the Decision of the Bekasi State Court Number 333/Pid.Sus/2021 PN Bks, as well as to understand the legal regulatory steps taken and decided on the perpetrators of the crime of abortion in Bekasi. The research that the author raises can be obtained with a normative research system by reading the literature, studying and understanding the more complex Indonesian legal systematics at the core of the problem. To support this research material, the author also analyzes and harmonizes based on theories from study experts that are relevant to the problem with a qualitative approach method. The results of the author's research show that the decision taken by the Bekasi District Court Decision Case Number 333/Pid.Sus/2021/PN Bks, namely the determination of the judge to consider sanctions for the perpetrators of the crime of abortion. Also as a sanction of legal consequences due to illegal abortion, the defendant is legally and convincingly declared guilty and must be held responsible for acts that violate criminal law.

**Keyword:** Abortion, Pregnancy, Criminal Acts.

### INTRODUCTION

Life is a gift from God given to all living things created by Him, including mankind. The aspect of life bestowed on each individual is a part of Human Rights that can only be taken back by the creator. Every individual who is born has the right to human rights that have been a part of him since he was in the womb. These rights must be respected, respected, and protected by the state and the law. Every individual has the right to respect and safeguard his or her dignity and dignity, in this case, one of the fundamental Human Rights is the right of every individual

to maintain and protect his or her survival to ensure security and well-being from external threats.

Along with the times, so does every existing technology. Technology and the development of the times can change human behavior, even in the way of human social behavior, which begins to behave actively, freely, and can be said to deviate from norms and religion. Sexual behavior, for example, freedom in association leads to an increase in sexual relations outside of marriage, which ultimately triggers negative impacts, one of which is an unexpected pregnancy. For Indonesian people who live to uphold human rights and religious norms, the incident of pregnancy outside of marriage due to freedom of association is a disgrace for many people who are not ready to bear it. This can lead to violations of human rights, namely through the criminal act of abortion.

In the scientific language of abortion, it is *Abortus Provocatus* which means an abortion that is carried out intentionally, which most people view abortion as an illegal, immoral, and violation of the rights of the prospective life to be born. However, on the other hand, there is an emotional struggle from a mother who considers continuing the pregnancy even though the pregnancy occurred in an unwanted condition. Throughout time, various problems arise due to legal, religious, and ethical prohibitions. Legally, abortion is considered a criminal offense in the Indonesian legal system, although there are certain rules that allow it under certain conditions. Debates on religion, ethics, and values in society provide justification for each view. Therefore, both pro-choice and pro-life views related to abortion have arguments that can be held accountable from a certain perspective (Alesan Sembiring Milala, 2019).

In the Indonesian legal system, the revocation of the right to life can be subject to severe law guided by the legal provisions described in the Criminal Code, as is the case in cases of murder committed through planning or as a result of negligence that can cause the death of a person. This also includes the act of killing the fetus in the womb or the act of abortion.

The regulations in the Criminal Code are not fully aligned with the provisions stipulated in the Health Law No. 36 of 2009. The act of abortion in various circumstances can certainly be justified based on the rules as stated in Article 75 of Law No. 36 of 2009 concerning health stating that:

1. Abortion is prohibited by everyone.
2. Exceptions to the restrictions mentioned in paragraph (1) may be made for certain reasons:
  - a. Signs of a medical emergency that are identified early in pregnancy, including those that endanger the safety of the mother and the womb, as well as those with serious congenital abnormalities. Birth anomalies, as well as conditions that allow them to be corrected and make it difficult for the prospective baby to be able to live outside the womb;
  - b. The state of pregnancy caused by rape can be at risk of causing psychological trauma for the victim.
3. The acts mentioned in paragraph (2) can only be carried out after going through the process of counseling guidance and/or giving advice before the process is carried out, which is then followed through counseling guidance after the action is carried out by a competent counselor who also has authority.
4. A more detailed explanation related to the signs of medical emergencies and cases of sexual violence, as stipulated in paragraph (2) and paragraph (3) of the Government Regulation.
5. Then it can be seen again in Article 76, that: Before the gestational age reaches 1 (one) month and 3 (three) weeks;
  - a. Through medical personnel who are masters in their fields, and the right to act.
  - b. Obtaining the consent of pregnant women.
  - c. Obtaining the consent of the husband, except in the case of victims of sexual violence.
  - d. Health service provider facilities meet the criteria set by the Minister.

Meanwhile, in the Criminal Code which is regulated in Chapter XIX regarding criminal acts that threaten life, as stated in articles 346 to 349 of the Criminal Code, it provides strict

sanctions and prohibitions for those who commit abortions for any reason. Any act of provocative or criminal abortion cannot be carried out alone by a person, abortion should be performed by competent and certified medical personnel, not by incompetent parties such as shamans, masseurs or other civilians. Therefore, actions that involve several people or are carried out together are referred to as participation. From articles 55 and 56 of the Criminal Code, it can be understood that the inclusion is:

1. A person whose actions are included in the Criminal Code article 55 paragraph (1) can be considered a designer or perpetrator, namely those who:
  - a. Someone who implements;
  - b. Someone who commands to execute;
  - c. Someone who participates in implementing;
  - d. Someone who deliberately encourages or offers.
2. A person whose acts are included in Article 56, is referred to as a person who provides assistance:
  - a. Individuals who are committed deliberately providing assistance while the criminal process is ongoing;
  - b. Those who commit with the intention of providing opportunities, tools, or information to carry out crimes.

However, based on the regulation of the Constitution No. 36 of 2009 concerning Health, there are exceptions followed by restrictions that must not be violated referring to the provisions of Article 76 letter (a), the maximum pregnancy condition is 6 (six) weeks starting from the first day of the last menstrual cycle. A medical personnel who performs an abortion in accordance with Article 76 letter (b) to save a pregnant woman and/or fetus, must carry out procedures based on applicable regulations and are carried out by medical personnel who have competence in their field and have a certificate authorized by the Minister. The incident will prove that the abortion performed is legal, justified, protected, and recognized by law.

Medical indications that require abortion, in a more limited sense, only include critical conditions, namely abortions performed in an attempt to save the mother if the pregnancy is life-threatening and there is no other way but to abort the pregnancy. Meanwhile, in a broader sense, abortion can be performed if it is known that the continuation of pregnancy can endanger the mother's health (Pailunus Soge, 2015).

Abortion cases are increasing every year, which in general the majority of people consider as a violation of the law because it deliberately takes lives. However, according to the provisions of the applicable law in Indonesia, abortion can be justified in certain cases if it is included in the medical provocative abortion, while other abortions are considered a criminal act that does not pay attention to the regulated limits known as criminalist provocative abortion (Sigit Wibowo, 2018) One of the cases of abortion or criminal provocative abortion can be found based on decision Number 333/Pid.Sus/2021 from the Bekasi District Court, where in the decision the perpetrator or defendant is a woman, Riesma Soeryatiningrum Halim born in 1989 an Indonesian citizen, Riesma has been pregnant with a baby (fetus) with a gestational age of 6 weeks calculated from the last menstruation (menstruation), It is possible that they did not want the baby but it was not due to rape, or medical disability. Riesma (the defendant) intends to abort her fetus, on January 24, 2021 Riesma (the defendant) searched and got a website called the Kuret Clinic which provides abortion services, then Riesma (the defendant) contacted the admin number of the Kuret clinic, asking for the place and cost to have an abortion. Which Riesma (the defendant) agreed and intended to have an abortion at the clinic.

Right on February 1, 2021 Riesma (defendant) went to the place directed by the clinic admin, there Riesma (defendant) met Sofyan Taufik at KFC Bekasi City (witness 1), Taufik (witness 1) took Riesma (defendant) to a house or crime scene (crime scene), Riesma (defendant) met with Ernawati (witness 2) where Ernawati is the wife of Sofyan Taufik. Riesma (the defendant) was ordered by Ernawati (witness 2) to urinate, after which Ernawati (witness

2) gave a drug called Cytotec Tablets Misoprostol 200mg to Riesma Soeryatiningrum Halim. Misoprostol with a content of 200mg is given as a way to abort the womb which is usually one of the drug options, especially if the pregnancy is still in the early stages (Institute Criminal For Justice Reform, n.d.).

The drug stimulates the uterus, and within 5 (five) minutes, Ernawati (witness 2) performs a fetal vacuum (suction) procedure, which finally succeeded in removing Riesma's (defendant) fetus, after the fetal abortion process using the services of Ernawati (witness 1) under the guise of a clinic, Riesma (defendant) then handed over money with a total of Rp.5000,000 (five million rupiah) given to Sofyan Taufik (witness 1) for the cost of aborting the baby in the womb. Ernawati (witness 2), and Sofyan Taufik (witness 1) received a total of Rp2,000,000 (two million rupiah) in monetary profit, then the remaining money in total Rp3,000,000 (three million rupiah) was given to brokers who contacted and brought prospective patients.

Based on the case and the facts that occurred, the act of abortion that was carried out but not for rape, or for medical reasons that could endanger the life of the mother or the life of the prospective baby, is a criminal act (abortion provocatus criminalis), which deliberately kills the prospective baby in the womb.

The main issues that are the focus of this research are:

1. What is the criminal punishment imposed on Riesma Soeryatiningrum Halim in the case of Study Messengers number 333/Pid.Sus/2021/PN Bks?
2. How are the arrangements in Indonesia related to abortion?

## METHOD

This study is included in the category of normative studies that apply a qualitative research approach. In this study, the author applies a method based on a normative juridical approach. This method was chosen because the main data used came from secondary data obtained through the study of relevant verdicts and theories. The study of regulations and scientific works related to the issues being researched. The chosen approach is applied by studying literature sources, such as literature and legal rules, whose variables are in line with the topic of the problem raised.

Several stages compiled by the author around this issue are analyzed through the application of normative legal approach methods involving secondary legal reference materials, namely as sources or legal materials that explain primary legal symbols, such as books, articles, journals, research results, rulings, papers, and various other references that are relevant to the issue being discussed.

Primary legal references are legal sources that have authority, namely recognized as authorities, including laws, regulations, and all official documents that stipulate legal regulations. Tertiary law reference sources can be interpreted as sources that provide descriptions and guidance on primary and supplementary law, such as dictionaries, encyclopedias, and KBBI. Then using the verdict study, at the verdict study stage is carried out to obtain primary data as one of the analysis materials and supporting from secondary data. The primary data for the decision study was obtained from Decision Number 333/Pid.Sus/2021 of the Bekasi District Court.

The data study method applied is the legal reasoning study technique, which involves the use of legal arguments to establish the legal position reflected in the court decision. An attempt to find a legal basis in a legal event that includes arguments, logical reasons, and theories related to the issue raised as the reason underlying the legal decision taken.

The location of the research conducted by the author in the preparation of this research is at the Library of Buana Perjuangan University of Karawang, as well as at the Library of Singa Perbangsa University., Jl. HS. Ronngo Waluyo, Puseurjaya, Telukjambe Timir Karawang, West Java 41361.

## RESULTS AND DISCUSSION

### **Criminal Sanctions Imposed on Riesma Soeryatiningrum Halim in the Study of Decision Number 333/Pid.Sus/2021 PN Bks**

The act of abortion of the fetus carried out by the defendant Riesma Soeryatiningrum Halim which was assisted or participated in by people who acted as medical personnel, namely Ernawati (witness 2) and Sofyan Taufik (witness 1 as a broker), the arrest was successfully carried out by Mangipal Silaban, S.H., M.H. and the team of the Directorate of Criminal Investigation of the Metro Jaya Police, after obtaining prior information from a resident who could be held accountable. that in the house building located in Cibitung Village RT.001 RW.002 Bekasi City, an abortion or illegal abortion has been carried out.

According to the author, the actions taken by Riesma Soeryatiningrum (defendant), Sofyan Taufik (witness 1), Ernawati (witness 2) do not meet the category of medical emergency symptoms that can endanger the safety of the mother and fetus, such as serious genetic conditions or anomalies, such as being born without skin, cancer, heart leaks, or conjoined twins. In the smooth trial process, several witnesses emerged who managed to find out and search the house that was used as an illegal abortion/abortion place, namely 3 witnesses, namely Mr. Mangimpal Silaban, Mr. Daniel P. Bone, and Mr. Ahmad Hafiz A. In accordance with the testimony of the three witnesses, the defendant Riesma Soeryatiningrum confirmed and did not object.

According to the decision Number 333/Pid.Sus/2021 of the Bekasi District Court, with valid and convincing evidence, the defendant Riesma Soeryatiningrum Halim was proven to have committed an illegal abortion, as stipulated in Article 55 paragraph (1) of the Criminal Code, "as a party who commits, orders to do, encourages, or participates in committing an act", namely with the intention of performing an abortion. Based on the judge's consideration, the sanction imposed on Riesma Soeryatiningrum Halim is a prison sentence of 5 (five) months and a fine of Rp1,000,000 (one million rupiah), which if not paid, will be replaced with imprisonment for 1 (one) month, while the witness who assisted the abortion of Riesma Soeryatiningrum Halim, was sentenced separately.

The author analyzes that the three perpetrators, namely Riesma Soeryatiningrum Halim, Sofyan Taufik, and Ernawati, meet the elements that can cause a person to be convicted in this case of the crime of abortion, based on explanations and arrangements referring to Article 55 and Article 56 of the Criminal Code regarding participation and participation. Sofyan Taufik and Ernawati were involved in carrying out this criminal act by assisting the defendant Soeryatiningrum Halim in performing an abortion, therefore, deliberately participating in carrying out the act, involving at least two people who worked together consciously, which showed that there was an agreement and mutual knowledge between the perpetrator and the other perpetrator.

According to the author, judging from the facts found in the case of Riesma Soeryatiningrum, the elements "related to the perpetrator, who ordered, as well as active involvement in the action" have been fully fulfilled, so that what is contained in Article 194 jo. Article 75 paragraph (2) letters a and b of Law No. 36 of 2009 concerning Health, as well as Article 55 paragraph (1) of the Criminal Code have been fulfilled in all its elements, thus, Sofyan Taufik and Ernawati must be legally and convincingly declared proven to have committed a criminal act.

The author is of the opinion that even if an abortion is carried out illegally without permission from the pregnant person, the threat of imprisonment sanctions can still be imposed in accordance with the provisions of Article 347 of the Criminal Code paragraphs (1) and (2), with a maximum sentence of 15 (fifteen) years in prison, meanwhile, if a person deliberately assists in the abortion process with the permission of the pregnant party, he can be subject to a maximum prison sanction of 5 (five) years and 6 (six) months. If the pregnant person dies, the



threat of imprisonment can be extended to 7 (seven) years, in accordance with the provisions stipulated in Article 348 paragraph (1) and paragraph (2).

### **Judge's Considerations in Giving Case Decision Number 333/Pid.Sus/2021 PN Bks**

The author argues that the act of abortion for a person who violates it, which is not due to a medical emergency or as a result of sexual violence (rape victim) must be punished with imprisonment and the perpetrator who performs an abortion is obliged to be held accountable for his actions in the legal situation applied in Indonesia. In the Criminal Code, there is no explanation or distinction regarding the perpetrators of abortion, whether married or unmarried. In essence, as long as the subject commits an unlawful act, the subject can be held accountable, and there is no reason that can justify his actions, so punishment or sanctions can be imposed on the perpetrator.

According to the researcher, if a person performs an abortion that is not caused by a medical emergency or is carried out illegally and violates laws, norms, and religion, then he can be criminally punished with a maximum limit of 10 (ten) years. In addition, in this abortion case, the application of the principle of *Lex specialis Derogat Legi Generalis* refers to the provisions of the Criminal Code and Law No. 36 of 2009 concerning Health. This principle emphasizes that the special law (*lex specialis*) in health regulations, which specifically regulates abortion, overrides the general provisions (*lex generalis*) contained in the Criminal Code. So in this case, the more important regulation is the Health Law with a special character, which can then be linked (*juncto*) with the General Criminal Code.

According to the author, the results of the observation show that the basis for the judge's consideration in identifying, examining evidence, and deciding the case of illegal abortion in decision Number 333/Pid.Sus/2021 of the Bekasi District Court uses alternative indictments. In other words, in this case, the charges are arranged in layers, where each layer is an alternative that is an exception to the other charges. This means that, although there are several charges in a layered indictment, only one indictment needs to be proven regardless of the order of layers. If one layer is proven to be legitimate, proof of the other layer is not required. Riesma Soeryatiningrum Halim was prosecuted by the Public Prosecutor with the first charge, namely a violation of Article 194 which regulates "Elements of Intentionally Performing Illegal Abortion", which is related to Article 75 paragraph (2) of Law No. 36 of 2007 concerning Health, with the element of "Not in Accordance with the Provisions Referred to in Article 75 paragraph (2)", based on Article 55 paragraph (1) number 1 of the Criminal Code including "Elements Who Commit, Tell to Do, and Participate in Doing Deeds". The second indictment is a violation of Article 77A paragraph (1) related to Article 45A of Law of the Republic of Indonesia Number 35 of 2014 which amends Law Number 23 of 2003 concerning Child Protection, as well as Article 55 paragraph (1) number 1 of the Criminal Code.

Based on the legal facts revealed during the trial, it is known that the judge who tried the case with decision number 333/Pid.Sus/2021 of the Bekasi District Court was Riesma Soeryatiningrum Halim, then the Judge had the most appropriate indictment to be considered, namely the first indictment for violating Article 194 of Law Number 36 of 2009 concerning Health, stipulating that:

- 1) Whoever deliberately carries out an abortion contrary to the provisions of Article 75 paragraph (2), can be sentenced to imprisonment of up to 10 (ten) years and a fine of up to Rp.1000,000,000.00 (one billion rupiah).

And *juncto* (jo) or connected with Article 75 paragraph (2) of Law Number 36 of 2009 concerning Health which states:

- 2) Any individual is prohibited from having an abortion.
- 3) The prohibition referred to in paragraph (1) may be exempted based on:

- a. Indications of a medical emergency that are detected from the beginning of pregnancy, either that endanger the life of the mother and/or fetus, who experience severe genetic diseases and/or anomalies, so that the baby cannot survive outside the womb.
- b. Pregnancy due to sexual violence that can cause psychological trauma for rape victims.

And juncto (jo) or related to Article 55 paragraph (1) number 1 of the Criminal Code reads:

- 1) Those who do, who command to do, and who participate in doing the deed.

In the author's view, in order to prove that the defendant Riesma Soeryatiningrum Halim had committed an illegal abortion, that is, if a person deliberately causes, instructs, or conveys a request to another person to abort the pregnancy, then all criminal elements must be fully fulfilled.

- 4) The element of every person; namely the subject of the law who commits criminal acts and their actions can be held accountable, for this case the subject is Riesma Soeryatiningrum Halim, so the element of everyone has been fulfilled.
- 5) Element "With the Intention or Intention to Perform an Abortion"; According to *Memorie van Toelichting*, it means that doing the delay deliberately is a clear intention and understanding. In short, it means having the will to act, and knowing the consequences, and being aware of what is being done. In this case, based on evidence, testimony from witnesses, and having confirmed the confession of the defendant Riesma Soeryatiningrum Halim, thus the element of "intentionally performing an abortion" has been fulfilled.
- 6) element of "not in accordance with the provisions of laws and regulations"; The legal truth that was revealed was that Riesma Soeryatiningrum had had an illegal abortion, which the author considers that the defendant alias Reisma did not want the child, so that Riesma made an illegal abortion attempt.
- 7) Elements of "Those Who Do, Those Who Tell to Do and Those Who Participate in Doing"; In this case, the person who performed the abortion was Riesma Soeryatiningrum Halim (defendant) aka the mother who was pregnant with the child who was aborted, Sofyan Taufik (witness 1) the person who also advocated alias the broker who delivered Riesma to the house where the abortion was performed, Ernawati (witness 2) who also played the role of a medical who prepared medicines, sanitary napkins, and fetal suction vacuum devices.

## CONCLUSION

Criminal acts in the case of illegal abortion, there are several perpetrators, namely Riesma Soeryatiningrum Halim who is pregnant and who has had an abortion, in the judge's decision at the trial of case Number 333/Pid.Sus/2021 of the Bekasi District Court, Riesma was found guilty legally and convincingly, and is considered capable of taking responsibility for her actions, by paying attention to the elements in the first indictment that violated the provisions of Article 194 juncto Article 75 paragraph (2) of the Law Number 35 of 2009 concerning health which is associated with Article 55 paragraph (1) number 1 of the Criminal Code. Then for the perpetrators who participated in the abortion, namely Sofyan Taufik and Ernawati were tried separately with Riesma Soeryatiningrum Halim, but the author is of the opinion that the perpetrators who participated in the abortion as well as Sofyan Taufik and Ernawati were legally and convincingly proven guilty and potentially subject to the Criminal Section 348 paragraph (1) juncto Article 56 "deliberately assisting to cause abortion with the consent of the pregnant woman" can be sentenced Threat of imprisonment with a maximum sentence of 5 (five) years and 6 (six) months.

The author argues that the punishment of sanctions against the defendant is not as a retaliation for his actions, but aims to foster and educate that illegal abortion is the same as killing an innocent person, and has the same right to life. So that the defendant realizes and understands his mistakes, so that he can become a responsible Indonesian citizen in the future.

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