



A Phenomenological Study of Polemic Regulation of Abortion Law on Medical Emergency Indications in Hospital

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Article

Article History

Received: 8/3/2023
Reviewed: 10/6/2023
Accepted: 28/7/2023
Published: 30/7/2023

DOI:

doi.org/10.29313/mimbar.v39i1.2082



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Volume : 39
No. : 1
Month : June
Year : 2023
Pages : 71-80

Abstract

Abortion is a crucial law in health law. But in reality, abortion with some medical reasons is a legal way to be taken in providing solutions to safety problems related to pregnancy. The polemic of overlapping legal rules that apply and occur between the Health Law and the Criminal Code is certainly a condition that must be addressed wisely through some analysis so that it is expected to find the best middle ground in addressing both matters. This study aims to determine the description of the implementation of abortion on indications of medical emergencies in hospitals associated with abortion law regulations namely the Criminal Code and the Health Act. The research design used in this study is qualitative with descriptive phenomenology approach. This study reveals a picture of the implementation of abortion arrangements based on aspects of medical emergencies that are connected between the Health Law and the Criminal Code regulation of abortion crime. The researcher analyzed the data using Colaizzi analysis, which completes the analysis by re-clarifying the participants. The results of the study found that legal issues regarding abortion regulations indicating medical emergencies as long as it refers to the procedure in accordance with Health Law No. 36 of 2009 then the legal issues regarding the Criminal Code on abortion can not be raised to the surface, because medically abortion provocatus medicinalis or abortion on indications of medical emergencies is an abortion that must be performed on pregnant women in emergency conditions that if not performed abortion can threaten the life of the pregnant woman.

Keywords: Phenomenology; Abortion Law; Medical Emergency; Hospital

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Introduction

Abortion is included into human civilization; it is usually as an effort to act naturally because human do not want to pregnancy. As long as the development of various nations have recognized and used several types of plants which are considered efficous for uterine contractions to release the fetus. This abortion can occur due to the intentional causes (abortus provocatus) and natural causes in general, which is caused by the pathophysiological process of pregnancy (spontaneous abortion). The desired abortion relates to health-reasons, is permitted by existing legal rules (abortus

therapeuticus, but for country is very strict about the prohibition of abortion's practice another reasons that the (abortus criminalis).

Abortion is a crucial law in health law. However in reality, for several medical reasons it is a legal way to be taken in providing solutionn to safety problems related to pregnancy (Khoirul Bariyyah dan Khairul Muttaqin, 2014). And in other provisions, the implementation of abortion is considered an illegal act; this provision is in line with several legal regulations which do not allow explicitly to abortion's practice. On the other hand, the country is obliged to provide a health insurance to women, so abortion is allowed for certain reasons, it is certainly with the help of medical personnel who do the abortion according to existing legal rules. In the medical term, abortion is known as a term for an abortion, which is an attempt to remove the results of conception process of the fetus out of the womb (Supriadi, 2001). World Health Organization (WHO) defines to abortion is as a way of stopping life of a womb under 165 days or it has weighing less than 1,000 grams. Abortion can also be interpreted to remove or dispose of premature embryos or fetuses; this term is also called abortus provocatus.

One of regulations related to abortion is regulated in law, which is Law Number 36 of 2009 concerning Health where it is classified by the government on October 13, 2009. The enactment of Law Number 36 of 2009 concerning health by some people, both Health practitioners and academics are considered as the answer to legal problems which is related to health problems; one of them are related to the issue of abortion rules. This law is a reference for health workers, particularly doctors, in practicing abortion. In Indonesia, an obstetrician is not allowed to carry out an abortion without a clear reasons; a doctor is sworn in through the Indonesian Doctor's Oath based on the Geneva Declaration which comes from the Hippocratic oath which states to respect every human life, starting from the moment of conception (Mirza Maulana, 2010). It is specifically stated in IDI code of ethics which regarding to general obligations article 7d: every doctor must always remember to the obligation to protect human beings life. So that in Law Number 36 of 2009 concerning Health which contains the legal position of abortion which is one of conditions for an abortion is carried out to an indication of a medical emergency, without that basic, the act of abortion is considered to be illegal. In carrying out the duties of health services, especially in medical emergencies, the basic foundation is based on saving human lives.

Rules of relating to abortion regulations are not only regulated in Law Number 36 of 2009 but also they are regulated in Criminal Code (KUHP) for abortion crime which are regulated in Article 299, Articles 346-349. Article 299 of Criminal Code prohibits strictly an act which kills life as a form of crime. The affirmation states that a pregnancy must be alive, which means alive, including abortion for emergency (forced) reasons, either for the prohibition againts the perpetrator or for those who assist in carrying out the abortion, even medical personnel will receive a double penalty if they assist in carrying out an abortion. This provision is surely very burdensome, particularly for medical personnel who carry out abortions for medical reasons (Erdianto Effendi, 2011).

The results of preliminary studies conducted in hospitals explains that the provisions for abortion are due to medical emergencies and the basic principle is to save the life and a pregnant woman's health generally or if it is caused her pregnancy can threaten a pregnant woman's health and life. It is based on article 53, the second part of health services, paragraph one, service providers, chapter VI of health efforts, Law No. 36 of 2009 are individual health services which is aimed on curing disease and restoring individual and family health. It can be seen from legal point of view, the practice of medicine is essentially a fundamental right of each person which is inherent from they birth (Slamet Kurnia, Titon, 2007). The first basic right is the right for health care and the second is the right to determine one's destiny. From these two elements, medical law or health law stand out because they are closely related to human rights and health.

The polemic of overlapping legal rules that applies and occurs between Health Law and Criminal Code regarding abortion is certainly a condition that must be addressed wisely through several analyzes, particularly field analysis, so that it is expected that a middle way is the best in responding to these two matters. The analysis is carried out to concern how the regulation of abortion position in Criminal Code can work in the community and the arbitrary is included in the classification of abortion as a medical reason according to Law No. 36 of 2009 which concern to Health and it includes the legal position of abortion for indications of a medical emergency, and it will be analyzed later that it is related to rules conflict when it is faced to provision of Criminal Code (KUHP) for the crime of abortion which has been regulated in Article 299, Articles 346-349. There is a great expectation related to the discussion of the issue, particularly for health workers as the executor in abortion act, which is medical personnel, in case of doctor and medical teams, have a strong legal basic in carrying out their duties and functions and they are legally protected if it is occurred a condition that appears to legal problems from the conducted abortion.

Research Method

Research design used in this study was qualitative with descriptive phenomenology approach, which was a study tried to analyze a condition conducted descriptively and introspectively and it

was related to all of awareness of human creation and their experience both in sensory, conceptual, moral, aesthetic, and religious aspects. Phenomenology taught individuals to interact and learn more from phenomena, so that the meaning of reality as well as the natural essence of reality that could be understood by the observer or researcher. Phenomenology research demanded a description observed from the daily common experience (Polit & Beck, 2014). In this study, it revealed the description in the regulation implementation of abortion which was based on the aspects of medical emergency associated with the rules of Law No. 36 of 2009 with the regulation of Criminal Code of abortion crimes that had been regulated in Article 299, article 346-349.

The four stages of process conducted by researcher in this phenomenology research was based on Polit & Beck (2014) such as: 1) Bracketing Stage: the researcher saved information of assumption, knowledge, and beliveness related to the observed phenomena; 2) Intuiting Stag : the researcher entered totally into the observed phenomena; 3) Analyzing Stag : the researcher identified essentially related to the observed phenomena; 4) Describing and Interpreting Stage: the researcher arranged each data which had classified into a widely of narration form.

The phenomenology research was conducted in hospital with the participant of this research was obstetrician with medical teams, which was midwife who worked at maternity room. The participant was taken by using purposive sampling with the sample number was 6 people. Here was the participant selection of this research were: 1) Participant was obstetrician who worked at maternity room in hospital and they had a role in handling abortion action; 2) Medical teams trusted in handling abortions in the hospital; 3) Having had an abortion treatment; 4) Willing and able to communicate well and cooperatively.

Data was collected by interviewing with using research aids, in case of voice recorder to record a conversation between researcher and participant, and also field record to help the researcher wrote other data during interviewing process. After interviewing process was finished, data from the interview result was collected and it was analyzing to those data. The researcher conducted data analysis by using Colaizzi analysis, which was to completing its analysis by conducting reclarify to participant. The stages of data analysis conducted was in form of: 1) Read the overall description of participant about the phenomenon was being studied; 2) Separate the significant statements; 3) Formulate the meaning of each significant statements; 4) Make each unit of meaning into one theme/ cluster of meaning; 5) Integrate each theme into a complete description; 6) Validate the analysis results to participants; 7) Improve the analysis result with the obtaining data during the validation process.

Results and Discussion

Description of Participant Characteristic

Participants who is participated in the study related to abortion are 6 people. Participants in this study used the P code which is used to replace naming while describing the sequence of interviews that have been conducted in the form of P1, P2, P3, P4, P5, and P6. Participants of the study have experience as medics who is responsible for managing abortion and they have worked for more than 5 years.

Participants are medical personnel who work specifically at maternity room in hospital. The characteristics of this study are participants who domiciled in banten regional hospitals. Six participants of this study are three males, and the rest are females. In-depth interviews with six participants are conducted at the hospital by explaining previously to them of the researcher's intentions and objectives and by providing an informed consent sheet as the participant's consent sheet.

Theme Found

In this part, it explains specifically a theme identified from research results. Those themes are grouped based on several categories.

Table 1
Theme of Research Findings

No	Theme
1	Criteria of patients who are given abortion services
2	Types of diseases performed by abortion
3	Types of abortions performed
4	The guidelines and experience of cases that involves legal aspects based on Law No. 36 of 2009 and the regulation of Criminal Code of abortion crimes.

Criteria of patients who are given abortion services

The study results with the first theme are related to the criteria of patients who are given abortion services in hospitals that expressed by all of participants. The expressions come from sub-theme, which is the condition of pregnant women who had abortion and the principle of action, here is the expression as follow:

"...i was in conducting abortion with team, I usually would do medical observation at first, and I also did recheck the additional supports; from that activity, I would know about the patients' condition, and I would make sure for diagnosis of pregnant women. From that, I would conduct finally that this patient is in condition as I observed... entering medical emergency or not, also and her life is threatened or no, it could be her pregnant women or her fetus or both was threatened. In principle, I prioritized the safety of pregnant women first, but we still strive for the safety of both. But if there was no other choice, the main principle was to focus on the life of pregnant women, that's the principle" (P1)

"...My principle in conducting abortion was based on the safety of the pregnant woman, however it was not directly carried out abortion well, it must be seen first whether it was included into the criteria of emergency or not... if there was no emergency, so it didn't the abortion....we could get the law later, particularly in this era people had already understood about the law, if we were not careful, it could be fatal as a result " (P3)

Participants in the study had principled that in conducting an abortion, it should be based on the aspects of rules applied. They are aware that if they make a mistake in determining the policy related to the patient's condition will result in a legal doubt. In general, the principle of abortion in pregnant women is that there must be indications of medical emergencies which threaten life especially for pregnant women and there is no other option beside to do abortion.

Reviewing from Article 75 of Law No. 36 of 2009 which regulates the act of provocatus medicinalis abortion can still apply in Indonesia even though the rules are different from the formulation of provocatus criminalis abortion according to the Criminal Code. If we are looking at the formulation of Article 75 of Law No. 36 of 2009, it is clearly explained that Law No. 36 of 2009 prohibits abortion, except for the type of abortion provocatus therapeuticus (i.e., an abortion conducted to save the life of a pregnant woman and/or with her fetus). The principle is related to the medical action of abortion provocatus medicinalis which can be done if the life of pregnant women is threatened with death and it can also be done if the child to be born is estimated to have severe disabilities and it is indicated not able to live outside the womb. For example, the fetus suffers from cortical ectopia disorder (i.e. the condition of the fetus that will be born without having a chest wall so that it will be visible to the heart), rakiskisis (the condition of the fetus that will be born with an open spine without covered skin) and anencephalus (the condition of the fetus will be born without a large brain) (Clifford Andika Onibala, 2015).

Legal certainty in Indonesia that regulates abortion is related to problems between the Criminal Code and the Health Law, so the middle way is to use the principle or principle of Lex Specialis Derogat Legi Generali, which means that a more specific law overrides a more general law. So the provisions of the law in cases of abortion are more inclined to use the Health Law which allows abortion only in conditions where there has been a medical emergency and pregnancy as a result of rape. The concept of regulating abortion in Indonesia in the future is the presence of the Draft Criminal Code which still has the concept of prohibiting abortion by anyone and under any circumstances, but only expands anyone can be punished, previously only doctors, midwives, and pharmacists, so now it can be added the profession of doctors and pharmacists are included in this scope (Ni Putu Endrayani & I Gusti Ketut Ariawan, 2021)

Types of diseases performed by abortion

The research result with the second theme is types of disease performed by abortion in hospital expressed by all of participants. Those expressions come from sub-themes are types of pregnant women's disease as one of the basic abortion actions and the basic of crietria for disease, here is the following expressions:

".....Data from 2019 to 2020, the accompanying disease was carried out abortion in hospital, namely: PEB at the gestational age was above 26 weeks, oligohydramnion (at the age of pregnancy was below 6 weeks), history of SC was under 6 weeks, KPD II when it was around the age of the fetus 20-24 weeks, BO (Blighted Ovum), the rest of the placenta at gestational age 10-12 weeks, when one was elongated, breech location" (P4)

"...obgin specialists usually determined the indications of medical death experienced by the pregnant women, was reviewing from the results of medical diagnoses of one of six types of severe diseases that endanger to the health of the mother and / or fetus, namely: cervical cancer degree iii-iv (cervical cancer), decompensatio cordis degree iii-iv (heart failure), glomerulonefritis chronic (chronic kidney inflammation), ulcerative colitis chronic (chronic intestinal inflammation), rubella virus infection (rubella virus infection), schizophrenia (severe mental disorder)" (P5)

"...My experience... With having a history of pregnancy medical emergencies, an obgin doctors and medical teams will provide the explanations related to the disease which endangers to the safety of life and its health, so that when the pregnancy was before 6 weeks and there was no progress in a better direction then the patient is recommended to do abortion" (P6)

"...So for the case of pregnant women in the hospital, they were not normal for overall... There were pregnant women with several accompanying diseases....for this accompanying disease we determined later, whether it is danger to the mother's life if it was continued....including the life of the fetus....or if the disease is not related to her pregnancy, it was obviously continued....maybe that's the principle"(P1)

Participants in this study provided the description that in determining an abortion was not stated that all diseases in the pregnant women patients could be indicated to be able to do abortion. There were certain conditions that a pregnant woman could have an abortion. Law No. 36 of 2009 on Health Article 75 paragraph (2), based on: a. Indications of Medical Emergencies detected from an early age of pregnancy, both it was life-threatening of the mother and/or fetus, who suffered from severe genetic diseases or defects.

Article 76 explains that abortion as referred to in Article 75 can only be conducted: a) Before the pregnancy aged was 6 (six) weeks; it is calculated from the first day of the last period, except in a medical emergency case; b) By health workers who have the skills and authority that they have a certificate issued by the Minister; c) With the consent of the pregnant woman concerned; d) With the husband's permission, except the victim of rape; e) Qualified health care providers issued by the Minister.

In addition, by publishing of government regulation number 61 of 2014 on reproductive health became a benchmark for the legal position related to abortion because it contains and it refers to Law No. 36 of 2009 on health, particularly in Articles 74, 75, 126, and 127. Meliza Cecilia Laduri in the journal *Lex Crimen* (2016) explains that arrangements regarding abortion according to Law Number 36 of 2009 concerning Health provide space for abortion to be permitted for certain reasons. Article 75 of the law provides two reasons for having an abortion, namely medical indications in the form of a fetus with congenital/genetic defects and for women who are victims of rape. To have an abortion, the conditions set out in Article 76 must also be fulfilled.

Types of abortions performed

The study results with the third theme are the type of abortion performed in the hospital that was disclosed by all participants. The expression comes from the sub-theme of the type of abortion performed is accompanied by the cause of the abortion, here is the following expression:

"...There were many types of abortions, there were several types of abortion... Sometimes people knew generally about abortion for one type only....so there was such a thing as Spontaneous abortion or in Indonesian means spontaneous abortion, well this abortion was usually caused as due to the trauma of an accident. Pregnant women were riding a motorcycle and she suddenly fell, so it resulted in miscarriage of the womb, if it had been like that, it must be conducted action to mother was saved... but, when she got in the hospital, firstly it was checking that it was true or not that there had been no miscarriage. So, it's not reckless" (P1)

"...in simply, there were two types of abortion, namely spontaneous abortion could be by an accidental trauma, and induced abortion was a deliberate abortion....if this one was usually an abortion because the condition of pregnancy threatens the physical or spiritual health of the mother or it could be due to a defective fetus... but if this one was rare, mostly because the condition of the mother was threatened like the mother had PEB. So, if it was not possible, it must be aborted so that the mother was safe... for this, there is surely given first informed consent, if not it was not given an explanation, it could be a misperception... The ends it could demand us" (P3)

Participants of the study explain that abortion is divided into two, such as: a) Spontaneous abortion, is a miscarriage of the womb caused by the accident trauma or other causes; b) Induced abortion, is a deliberate abortion, this type of abortion is included: (1) Therapeutic abortion is an

abortion that is conducted because the pregnancy threatens mother's physical or spiritual health, (2) Eugenic abortion is an abortion carried out on the fetus due to defects.

Medically, abortion is the termination and the discharge of pregnancy results from the uterus before the fetus can live outside the womb (viability). The age of the fetus can live outside on the womb has a limit of 20 weeks, but there are also give a limit of 24 weeks. For the production of a fetus aged 7 months is called immature, while aged 7-9 months is called premature, aged 9 months or more is called mature. So, fetal discharge that results in death can occur up to the age of 20-24 weeks, and it is called abortion, but if the discharge over that age and it results in fetal death, it is called infanticide. Article 76 explains: abortion as referred to in article 75 can only be performed; before the pregnancy is 6 weeks old started from the first day of the last menstruation, except in medical emergencies.

Based on Criminal Code, there are 4 acts prohibited in article 346 of Criminal Code, such as: aborting the womb, killing down the womb, asking others to kill the contents. Meanwhile, the act of aborting the womb is doing an act of coercion with tools and ways however it can result the fetus or baby coming out prematurely. Applications related to illegal abortions that are not permitted in Indonesia, such as aborting/deadly the womb intentionally or assisted by other people, then this action will be subject to strict criminal sanctions. Meanwhile, the legal action of provocateurs abortion, namely the type of artificial abortion by the provisions regulated in the Health Act, can be carried out. Legalized abortions are for women who become pregnant with medical emergencies and women who become pregnant as a result of rape (Gracia Novena Maridjan, 2019).

The guidelines and experience of cases that involves the legal aspects and it is based on Law No. 36 of 2009 and the regulation of Criminal Code of abortion crimes

The study results with the fourth theme are the guidelines and case experience involving legal aspects which based on Law No. 36 of 2009 and the regulation of Criminal Code (Criminal Code) of abortion crimes. The expression comes from the sub-theme which is the guidelines become the policy of Standard Operating Procedures for health workers that decide to conduct abortion and the experiences related to abortion cases which are carried out that intersect with the health law and Criminal Code, here is following the expressions:

"...Honestly, if we were discussing about the legal aspects, maybe I was lack perfectly... But as a doctor we still had to understand the law... Moreover, the actions we took are intersect with the law. So well... regarding to SOP of abortus management was determined by the director of our hospital, there was obviously a basis. It was not without foundation. My main basic was Law No. 36 of 2009 on Health which replaced the previous health law, namely Law No. 23 of 1992 and also the provisions of the regulations issued by the minister of health. If relating to Criminal Code, because it has been accommodated in the Health Law then this is the reference of SOP, the use of Criminal Code was usually for certain cases outside or if it was not in accordance with the SOP" (P2)

"...hmm... If asking about SOP of abortion, there was a special team in case of directors in the hospital who made the rule... and I was sure that it must had been based on the provisions of the applicable law...if we were more as implementers...which I knew if we were talking about abortion rules, it was certainly Law No. 36 of 2009 as a reference... There was also Government Regulation No. 61 of 2014 on reproductive health...then regulation of the Minister of Health (PERMENKES) No. 290 of 2008 concerning the Regulation of Medical Measures, the average case in this hospital with having he type of abortion due to a disease, so informed content to ask for the approval of patients or families must be done... relating to the controversy with Criminal Code, i thought it remains the Health Law which becomes a reference without overriding the rule of criminal law " (P3)

"...So far, to my knowledge there had been no cases of abortions performed in this hospital which were later complained for violating the rules of the Criminal Code related to abortion. ... most complaints were only related to the quality of service. yes usually, sometimes patients or families of patients feel the service wass like this well... or for example, the patient's curet was still bleeding, from there the patient was usually a bit angry about the quality of his service. but for the act of abortion itself is rare even as long as I am here no one complains that the abortion was not in accordance with the rules" (P6)

".... if I thought about the rules of Criminal Code in this hospital, there was no problem, because it was still the benchmark of the Health Law. Maybe this kind of controversy was fixed... You're a jurist, tried to fix it... So there was no overlap and no party was harmed... but in my opinion that the hospital's concern was the feasibility in running the SOP itself, such as doctors and

medical teams had been standardized yet? Did they have the certification of performing abortion or not?, the infrastructure facilities were in accordance with the stipulated yet... I guess that's well in my opinion..." (P1)

Participants of this study provide an explanation that in the management relating to the regulation of abortion in the hospital, one of them are the policy in handling and how abortion is carried out and applied by medical personnel in performing their medical actions as an effort to maintain health, in this case abortion as a form of saving the life of a pregnant woman related because the problems of her health diagnosis and it must pass a series of stages of due diligence in accordance with the rule of health law number 36 of 2009 (Harahap, M.Y, 2009). In addition, the policy rules are applied and affirmed as an effort by the hospital responsibility in providing a space and health facilities in carrying out medical actions by its health workers and this must be accompanied with the legal protection that relates to abortion law either in Criminal Code in carrying out medical actions against patients as a reference and the fundamental to Health Law No. 36 of 2009 and PP No. 61 of 2014 on reproductive health.

Abortion for the indications of medical emergencies can be justified by the principle of legitimate defense. Where people have the right to defend themselves if there is something threatens their lives. In case of a dangerous and life-threatening pregnancy, abortion or aborting the fetus is not the purpose of the act. The purpose of abortion is to save the mother's life, and fetal death is only the effect of the act, it must occur indeed at risk of emergency. Because when pregnancy is life-threatening pregnant women will always be faced with the same valuable, and it is difficult choices. In principle, if the pregnant woman and her fetus can be saved both, then the path of abortion will not be taken (Riza Yuniar Sari, 2013).

Tanti Kirana Utami & Aji Mulyana (2015) in the Mimbar Justitia Journal explains that doctors can be subject to criminal sanctions in the act of abortion (abortion) for medical indications if it is carried out without the permission of the pregnant mother or her family except in conditions or emergencies, abortion can be carried out without having to ask permission first. This provision is as explained in Article 4 paragraph (1) to (3) Regulation of the Minister of Health (PERMENKES) Number 290 of 2008 concerning Approval of Medical Actions, where doctors cannot be punished if they perform an abortion in an emergency.

The following is a series of data related to the basic principles of abortion implementation in hospitals, it is observed from the various treatments of abortion itself such as: a) It is about 12-15 percent of pregnancies are spontaneous before the age of 20 weeks, so it is impossible to know at first, whether abortus immens or continue to abortus insipiens, incomplectus or multifactorial; b) Multifactorial causative factors; c) Ultrasound can determine the fetal heart rate (>5mm) and identify abnormalities of an organ.

Several factors that affect the implementation of abortion regulations in hospitals, are: a) The fulfillment of indications of medical emergencies to patients who are indicated that they can endanger patients' life and health in accordance with the rules of Health Law No. 36 of 2009. It is found a history of disease or abnormalities in fetus or it is caused by other factors that resulted in the threat of life and health of a pregnant woman; b) There is agreement from both parties to perform the official and legal abortion procedures and mechanisms in accordance with the valid and the applicable rules; c) If the abortion is conducted because it must be done as soon as possible because it endangers the patient's life, the amniotic fluid has broken first and it causes the baby to be poisoned due to something happened to a pregnant woman; it requires the medical personnel to choose between the mother or the baby if the action is done without prior approval by the hospital, and the medical personnel saves the life of the pregnant woman first without the consent of the family, it is protected and it is legal legalization because the purpose is for the safety of the soul of pregnant women first after that they report and do the administrative in accordance with the provisions of the hospital and applicable law. This action is in accordance with the mandate in the Code of Medical Ethics (KODEKI) which is article 1 states that: every doctor must uphold, live, and practice the doctor's oath, which then article 2 states that: A doctor must always do his profession according to the highest size (Priharto Adi, 2010); d) Abortion is performed in accordance with the applicable health standards and laws. The regulation of abortion in the implementation of medical indications for maternal health in the criminal law system in Indonesia refers to the rule of law and it is regulated in Articles 299, 346, 347, 348 and Article 349 of Criminal Code. Regulations regarding to abortion are also regulated in Health Law No. 36 of 2009 which regulates the criminal act of abortion, especially in Articles 75, 76, and 77. The rule was strengthened by PP No. 61 of 2014 on reproductive health which contains rules and conditions on how abortion is protected by law; e) Abortion is performed after pre- and post-action counseling. Pre-abortion counseling for

some cases is passed in this stage, it considers that the safety of a pregnant woman at the time of going to the hospital has been identified in an emergency, the patient is usually the result of another hospital referral whose counseling stage has never been done in the hospital, But for post this stage is always a priority in treatment or healing and recovery post-abortion, only for counselors conducted only by the medical personnel of the hospital, they are not a counselor in its field which means it is not from the professional counselor profession.

The problems occurred which is related to the regulation of abortion law occur in Criminal Code and the Health Law are both still applied and they are at the same level of position, namely in the legal order. Conflicts occur are particularly conflicts of rules governing the same object but with different rule principles. One side of Criminal Code of abortion with its point of view and purpose are trying to close the gap and opportunity by anyone and in any form to perform abortion, and this case must be appreciated as a step and a good goal. While on the other hand, the Health Law is related to abortion although in principle prohibits but it still gives special space to the exception of abortion on 2 (two) conditions which are, if there is a medical emergency in the mother and or baby and pregnancy due to rape. The occurrence of conflicts related to these two rules will result in the enforcement of different punishments against abortionists in Indonesia. As a middle way, the harmonization of abortion arrangements must be done on how the view of Criminal Code and how the view of the Health Law in observing at this abortion act. In answering the problems arise, the solution can be taken is to use legal principles. One of the legal principles which can be used is the legal principle *lex specialis Derogat Legi Generalis*. The concept of this legal principle has the meaning or definition of "a special law that rules out common law", when it is translated into Indonesian, that "more specific laws put aside of more general laws". From this meaning it can be explained that if there are two rules of law which are contrary in the content, so it causes overlapping the regulations or it causes conflict of norms or disputed norms, then the principle used is the regulation which is more specifically legislation. When it is analyzed, the regulation of the Health Law is more specific than the Abortion Code which is still common, so the Health Law is used. Legal issues over the regulation of abortion indicate the medical emergencies as long as referring to procedures which is in line with Health Law No. 36 of 2009, so the legal issues of Criminal Code cannot be raised to the surface, because in medical, *abortus provocatus medicinalis* or abortion for the indications of medical emergencies which is a medical abortion that must be carried out against the pregnant women in an emergency, which if an abortion is not carried out, so it can threaten the life of the pregnant woman.

Analysis of the occurrence of differences in the rule of law, so it can be a shared responsibility, especially in this case is government as a power holder and strategic policy maker. Government has the authority to make changes related to the renewal or improvement of the draft Criminal Code on abortion which based on the conditions in the field; One of them is by observing and synchronizing Criminal Code with the Health Law, particularly related to abortion so that there is no overlap of the rule of law and the main purpose of abortion is to save the life of a pregnant woman who has problems with her pregnancy can be prevented and this is a step to provide certainty and comfort of the rule of law, so that women in this country do not feel criminalized by their own country.

Cindy Oeliga Yensi Afita (2020) in the journal *Rio Law* explains that Law Number 36 of 2009 concerning Health excludes the permissibility of abortion on the grounds of a medical emergency and the result of a rape victim and as its implementer, Government Regulation Number 61 of 2014 concerning Reproductive Health was made. Actually, in general, it can be concluded that the Health Law also prohibits the act of abortion. This is in line with the Criminal Code and Law Number 39 of 1999 concerning Human Rights which states that every child from the time of birth has the right to live and improve his standard of living and vice versa with what is stated in Law Number 35 of 2014 concerning Amendments to Law 23 of 2003 concerning Child Protection.

Based on the various things that have been stated, it is hoped that especially for health workers and managers of health service facilities at the hospital level, they can understand and understand as well as be able to carry out and enforce matters relating to abortion based on legal regulations, especially those containing health laws. and the Criminal Code regarding the threat of criminal sanctions. So in the future, there will be no more health workers or hospital health service facilities who will be affected by legal problems related to abortion, either because of their ignorance or because of their negligence in acting. Health is a human right and one of the elements of welfare that must be realized by the ideals of the Indonesian people as outlined in Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia (A. Kahar Maranjaya, 2020).

From the description of the research results for the implementation of abortion regulations on the indications of medical emergencies, the researchers observe and analyze that rules or the existing law regulation and it is applied generally has been effective in implementation in hospital, although there are some things or parts that still need to be perfected or completed. In general, there is no perception of overlap in medical personnel, especially doctors related to SOP rules or the guidelines in hospitals in determining abortion policies for the pregnant women with the certain conditions. The existence of abortion practices should be of concern to all parties, and legal provisions related to the regulation of health law expects that their existence is not to cause mutual turmoil pro-cons, particularly among medical and legal practitioners but a legal device that helps each other in solving the problem of abortion in the community as one way to make Indonesian citizens to be prosperous in terms of obtaining the right to health.

Conclusions

The regulation of abortion in the implementation of medical indications for maternal health in the legal system in Indonesia is regarding to the rule of law and it is regulated in Articles 299, 346, 347, 348 and Article 349 of Criminal Code. Regulations related to abortion are also set in Health Law No. 36 of 2009 which regulates the criminal act of abortion, especially in Articles 75, 76, and 77. The rule was strengthened by PP No. 61 of 2014 on reproductive health which contains rules and conditions on how abortion is protected by law.

The indicator of abortion still refers to Health Law No. 36 of 2009 as an indicator of the existing rule policy on hospitals. The principle of abortion is based on the discovery of a history of disease or defects in the fetus / it is indicated gene disease or DNA abnormalities which are fatal or birth defects, or diagnosis can not be cured so it is predicted through the various examinations of the life possibility which is very small or it is caused by other factors that result in medical emergencies threaten a pregnant woman's life and health and/or fetus..

The legal issues over the regulation of abortion for the indications of medical emergencies during it dues to procedures in accordance with Health Law No. 36 of 2009, the legal issue of Criminal Code cannot be raised to the surface, because in medical, abortus provocatus medicinalis or abortion on the indications of medical emergencies is a medical abortion that must be carried out against pregnant women in emergency conditions, when an abortion is not carried out it can threaten the pregnant woman's life (Yuke Novia Langie, 2014). It's just that if the provisions of abortion conducted, it needs regulation and law protection clearly so that the medical personnel and patients are safe in carrying out their medical actions and in accordance with the provisions of the law and legal conflicts that exist are not an obstacle then, so the concept of appropriate legal principles becomes the thing that must be put forward.

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