

The Crime of Abortion Seen From the Health Law and Government Regulations on Reproduction (Overview of Islamic Law and Social Control Theory)

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ABSTRACT

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Social control is every method or effort taken by related parties to prevent, reduce, and overcome criminal acts so that people's lives become and remain peaceful and orderly based on existing values and norms. Social control carried out by the community arises because of the community's desire to create a safe and orderly life, so that the community creates a number of values and norms that must be adhered to by each member. in terms of social control theory. The type of this research is library research using a descriptive qualitative approach. The data sources were obtained from primary data sources, namely the Health Law and Government Regulation on Reproduction and social control theory, then refined with secondary data sources obtained from books related to the themes studied. The results of this study indicate that the Criminal Code, Health Law Number 36 of 2009, and Government Regulation Number 61 of 2014 concerning Reproductive Health have not been effective in society, marked by the increasing number of abortion cases since the issuance of the regulation until now. Then from several social control institutions, the most effective social control is still religion (agent of social control).

1. INTRODUCTION

Broadly speaking, abortion is very dangerous for both the mother and the fetus, which can cause death for both. From the perspective of society, abortion is a social deviation. Abortion is identical to unwanted pregnancy, juvenile delinquency and casual sex. Whereas abortion is also carried out by a mother who is unable to continue her

pregnancy (endangering the mother's life) and as a result of rape. The impact of this unwanted pregnancy, especially victims of rape, brings bad consequences besides the victim experiencing long trauma even for a lifetime, she cannot continue her education, cannot socialize with her environment, as well as if her child is born, the community is not ready to accept her presence and even gets stigmatized. as an illegitimate child who should not associate with other children in the environment and other negative treatment. Meanwhile, if it is aborted (abortion), other than there is no safe place of service and legally it is considered a criminal act, a violation of normal religious, moral and social norms.

Abortion is divided into two, namely spontaneous and provocatus. In Indonesia abortion regulations are regulated by law (No.36, Undang Undang No.36 Tahun 2009 Tentang Kesehatan, 2009). The Criminal Code and government regulations (PP No.61, 2014). Between the Criminal Code and Law No. 36 of 2009 concerning Health, there are similarities, namely that the two legal rules prohibit the act of abortion provocatus because it is a criminal act which implies that the perpetrators of abortion provocatus can be punished. However, in the Health Law there are reasons for certain medical indications and the psychological impact of a rape victim as a condition for an abortion provocatus to be carried out, this reason is the difference between the rules for the abortion provocatus act in the Health Act and the Criminal Code. This difference raises many pros and cons against the law.

The emergence of pros and cons against Law No. 36 of 2009 and PP No. 61 of 2014 because there is an article which states that victims of rape are allowed to have abortions with terms and conditions applied. This seems to allow abortion in Indonesia which results in people not understanding what the real reason is in the emergence of Law No. 36 of 2009 and PP No. 61 of 2014 which contradicts the Criminal Code, the Child Protection Law and the Civil Code. Considering that abortion is considered illegal and prohibited by religion, people tend to berate someone who has had an abortion. For this reason, many people use unlicensed abortion services. However, some people who agree with the health law that allows abortion for rapists are of the opinion that the law protects the psyche of the rape victim, because they are afraid of psychological disorders. The law is a repressive social control. Because as Indonesian people we must obey the law, then

the law should not have ambiguity. Because the obscurity of the law can lead to social deviations.

2. METHODS

This research is a descriptive literature research using a qualitative approach. The data for this study were obtained from two data sources, namely primary data sources, namely the Criminal Code, Law No. 36 of 2009 concerning Health and Government Regulation No. 61 of 2014 concerning Reproductive Health. The next source is secondary data sources obtained from books related to the title under study, especially books on social control. The purpose of this study was to find out how the crime of abortion according to the Health Law and the Government Regulation on Reproduction in terms of social control theory.

3. FINDINGS AND DISCUSSION

A. Abortion and Social Control

Abortion is an abortion, (Echol & Hasan Shaddily, 1992). According to Black's Law Dictionary, miscarriage with the release of an embryo or fetus is not solely because it occurs naturally, but also intentionally or occurs due to human intervention (provocation), (Ekotama, Suryono;, 2001). Another definition of abortion is a process of ending the life of the fetus before it is given the opportunity to grow. In addition, the definition of abortion according to several other experts are: Eastman, Jeffcoat and Holmer. In a medical sense, abortion is 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, ie before the fetus can live outside the womb independently. (Chandra, Lilien Eka;, 2006).

According to Suryono Ekotama, et al said that from a medical point of view, there is no definite limit on when a pregnancy can be aborted. A woman's womb can be aborted at any time as long as there is a medical indication to abort it. For example, if it is known that the child to be born has severe disabilities or the mother suffers from heart disease, which will be very dangerous for the safety of her soul at the time of delivery. Even if the fetus is five months or six months old, medical considerations still allow provocative abortion. (Ekotama, Suryono;, 2001).

B. Types of Abortion

The abortion process can take place in several ways, namely first, spontaneous or natural abortion takes place without any action. Most are caused by the poor quality of egg and sperm cells. Second, artificial or intentional abortion (*Abortus Provocatus Criminalis*) is the termination of a pregnancy before 20 weeks of gestation or a fetus weighing less than 500 grams as a result of intentional and conscious actions by the prospective mother and the abortionist (in this case a doctor, midwife or shaman). give birth). Third, therapeutic abortion (*Abortus Provocatus therapeuticum*) is an artificial abortion performed on medical indications. For example, prospective mothers who are pregnant but have chronic high blood pressure or severe heart disease that can harm both the prospective mother and the fetus she contains. (Chandra, Lilien Eka;, 2006).

The act of abortion carries a high enough risk, if it is not carried out according to the standards of the medical profession. Some of the methods of abortion that are often carried out are physical manipulation, namely by massaging the uterus so that the fetus is separated from the uterus, using various ingredients to heat the uterus. The ingredients are like young pineapple mixed with pepper or other strong drugs and using unsterilized traditional tools that can cause infection. This action also harms the organs in the body.

C. Abortion of the Criminal Code, Law no. 36 of 2009 and PP

The regulation on intentional abortion (*abortus provocatus*) in the Criminal Code is classified as a crime against life. According to Supriadi, the Criminal Code does not allow abortion for any reason or anyone. and this provision applies generally to anyone who does it, even doctors who do it are subject to criminal penalties. However, based on the Health Law, if there are medical indications in an emergency to save the mother's life, certain health workers who have the authority to act can have an abortion. (Supriyadi, 2002).

Based on the provisions of the UUK, although the language used for abortion is vague, in general the law allows abortion if the woman who is going to have an abortion has a doctor's letter stating that pregnancy is life threatening, a letter from the husband of a family member that permits an abortion, laboratory tests that states that the woman is

positive and states that guarantees that after having an abortion the woman will use contraception.

Although abortion is clearly and strictly prohibited by law, in the reality of everyday life, it happens a lot or is done for various reasons. Even the number of abortions in people's lives tends to increase due to various factors. As stated by Anjali that UNFPA (The United Nations Population Fun) revealed that as many as 60% of pregnancies that were not planned by the mother resulted in the decision to have an abortion. With the enactment of law number 36 of 2009 on health (Health Law) replacing the previous health law, namely law number 23 of 1992. In the health law, the issue of abortion has gained legitimacy and affirmation. Explicitly, in this law there are articles that regulate abortion, although in medical practice it contains various reactions and causes contradictions in various levels of society. Although, the law prohibits the practice of abortion-but in certain circumstances it is permissible. (UU, No.36, 2009).

Based on the provisions of the Health Law, if we relate it to KTD abortion due to rape, we can conclude: First, in general the practice of abortion is prohibited, Second, the prohibition of the practice except in some circumstances. The conclusion is that the Health Law allows the practice of abortion for pregnancy due to rape on the condition that it is carried out by competent personnel, and fulfills religious provisions and applicable laws and regulations.

D. Social Control

According to Soerjono Soekanto, social control is a process, whether planned or unplanned, which aims to invite, guide or even force members of the community to comply with applicable values and rules. (Soekanto, Soerjono;, 1990). Furthermore, according to Kamanto, social control is a method used by the community to discipline members who disobey. (Kamanto, Soekarto;, 1993). The processes of social control that are carried out continuously will indirectly lead to individual behavior in accordance with the values and patterns or rules that have been mutually agreed upon by all certain levels of society. This social control process can be classified in three forms, namely: First, social control between individuals and other individuals, where one individual supervises another individual. Second, social control between individuals and groups occurs when individuals supervise a group and Third, social control between groups and other groups,

occurs when a group oversees other groups. Social control can occur in everyday life so that harmony and stability in everyday life is achieved. (Soekanto, Soerjono;, 1990).

Social control theory is a theory of deviation caused by a vacuum of control or social control. This theory is built on the view that basically humans have a tendency to disobey the law and also have the urge to go against the law. Social control theory addresses the issues of how society maintains or adds social control and how it gains conformity or fails to achieve it in the form of deviance. (Hagan, Efrank E., 3013).

Travis Hirschi who is the pioneer of this theory said that “Criminal behavior is the failure of conventional social groups such as; family, school, peers to bind or bond with the individual”. (Hirschi, Travis;, 1969). In the development of social control theory pioneered by Travis Hirschi, there is one expert who developed this theory. (Adang, Yesmil Anwar;, 2013). He proposed several theoretical positions, namely: *First*, that various forms of denial of social rules are the result of the failure to socialize individual citizens to act in conformity with existing rules or regulations; *Second*, deviations and even criminality or criminal behavior are evidence of the failure of conventional social groups to bind individuals to conform, such as: families, schools or educational institutions and other dominant groups; *Third*, every individual should learn to conform and not commit deviant or criminal acts; Fourth, internal control is more influential than external control. (J.Dwi Nurwanto&Bagong Suyanto, 2010).

E. Abortion in Islamic Law

Islam is a religion that upholds the sanctity of life, this is evidenced by a number of verses of the Koran that act on it. Whoever kills one soul is as if he has killed all mankind. The prohibition of killing for fear of poverty and killing is a matter of grave sin. Yusuf Qardhawi said that generally referring to the provisions of Islamic law, the practice of abortion is prohibited and is a crime against living beings, therefore the punishment is very severe for those who do it. (Al-Qordowi, Yusuf;, 1980).

Scholars from the Hanafi school allow abortion before the age of 120 days on the grounds that creation has not yet occurred. The views of some other scholars from this school only allow before 80 days of pregnancy on the grounds that creation occurs after entering the mudghah stage or the fetus enters the second 40 days (Abidin, Ibnu;, tt). The majority of Hanabilah scholars allow miscarriage as long as the fetus is still in the form

of a clot (alaqah) because it is not yet in human form (Abdullah, tt). Syafi'iyah forbade abortion on the grounds that life begins at conception, among which Al-Gozali in Al-Ihya, however, Al-Gozali in Al-Wajiz has a different opinion from his writings in Al-Ihya, he acknowledges the truth of the opinion that abortion is in the form of a clot. (alaqah) or a lump of flesh (mudghah) is fine. Because there hasn't been a settlement. Except the majority of Maliki Ulama prohibit abortion. The legal basis used as an argument for these scholars are two hadiths of the Prophet narrated by Muslims (Al-Ghazali, tt).

However, the views of fiqh experts who allow abortion in social reality cannot be used as an alternative for women who wish to become pregnant. However, if you look closely, the MUI's decision is that basically, like other fiqh experts, the MUI forbids the practice of abortion, including those who participate in doing it, assisting and permitting abortion (Nasional, Fatwa Musyawarah;, 2000). Prevention efforts against (KTD) are the most ideal, far better both normatively and in terms of any law and any religion compared to abortion. However, if it doesn't work, then a professional, rational and non-religious solution must be found. The debate between pro and contract regarding abortion does not provide any solution in overcoming the problem of maternal mortality due to unsafe abortion. In this case, when faced with two conditions that are equally dangerous, one can choose one of the conditions that are not the least dangerous, as the fiqh rules say: "the lighter between the two dangers can be done in order to protect the more dangerous one (*yartakibu akhaff al -dhararaiin li ittiqaa'I asyaddahuma*) (Khallaf, Abdul Wahab;, 1985). Another method states: "if faced with a dilemma that is equally dangerous, then take the smallest risk by avoiding something bigger risk (*idzaata'arradhat al-mafsadataani ruu'iya a'dzamuhuma dhararan*).

Along with these rules by considering aspects of goodness and benefit (mashlahat) and harm (madhar) both physically and psychologically and other factors that affect adverse events, alternative abortion fiqh can be formulated. As for the alternative fiqh, abortion which is intended as a solution proposed here is to be carried out immediately after it is known that KTD has occurred until before it is in accordance with the pregnancy past 8 weeks or the fetus is 6 weeks (42 days) according to the hadith of the Prophet. So, based on the hadith supported by fiqh principles, taking into account embryos and reproductive rights, alternative abortion can be done as a last resort in an emergency

situation after other efforts in the form of preventing adverse events have been unsuccessful. With the condition that it is carried out according to the Standard Operating Procedure (SOP) of the health profession through a counseling process before and after the abortion is performed (pre-abortion and post-abortion). Thus, alternative abortion fiqh can support efforts to strengthen women's reproductive rights in avoiding KTD and maternal death.

Islam has the principle that prevention is prioritized, as well as in the case of rape. The Islamic solution to rape cases is to end all forms of body exposing in public; ban pornographic films, books and songs; limiting promiscuity between men and women and not using women as advertising appeals to sell all kinds of goods. Above all people guilty of rape must be punished publicly. However, if preventive steps have been taken but the rape still occurs, then Islam recommends that the victim immediately get medical help to prevent any possibility of pregnancy.

This opinion is reinforced by the view of Qurtuhbi who says that semen is not something certain (yaqinan), and there is no consequence if a woman immediately expels it before settling in the womb. Also, medically speaking, as soon as a sexual act occurs, as in the case of rape, it is impossible to know whether a pregnancy occurred. Therefore, it is permissible at that time to receive treatment to prevent pregnancy. But if no action is taken to report rape and no medical action is taken to prevent possible pregnancy, then it does not seem justified to advocate abortion after a few days or months of the rape. Because later on, medically it will be difficult to determine whether rape really happened. And this can lead to misuse of purpose.

So, in the context of preventing KTD due to rape, it can be done by carrying out activities, among others; First, creating an Islamic environment in which the community cleans up all forms of temptation to ensure that rape does not occur is of course a commendable attitude. Second, if every woman immediately asks for medical help after being raped, then this action will certainly solve the problem of abortion, namely ending a pregnancy due to rape. But what generally happens is that after pregnancy appears, then what action should be taken is considered (Ebrahim, Abul Fadl Mohsin, 1997).

In Indonesia, there are several regulations governing the implementation of abortion, namely the Criminal Code, Health Law Number 36 of 2009, and Government Regulation Number 61 of 2014 concerning Reproductive Health. However, the

emergence of articles regarding the permitting of abortion for rape victims in Law Number 36 of 2009 concerning Health and Government Regulation Number 61 of 2014 raises big questions considering that this is contrary to the Civil Code article 2, Law Number 23 of 2002 article 1 concerning child protection. , Law No. 39 of 1999 article 52 paragraph 2 and article 53 paragraph 1 concerning human rights and the Criminal Code which is still valid until now.

Abortion, when associated with social control theory, refers to discussions of disability and crime associated with sociological variables. Social control theory focuses on techniques and strategies that regulate human behavior and lead to adjustments or obedience to society's rules. If viewed from the theory of social control, the enactment of law number 36 of 2009 in society has not been able to make social deviants afraid to commit deviant acts. This will be a problem if even a criminal sanction does not make people afraid of committing irregularities. Among social control institutions are *first*; the family which is the first primary group of a child and from where personality development begins. When the child is old enough to enter another primary group outside the family. *Second*, law enforcement agencies, namely the courts, prosecutors and police, these institutions are formally regulated by law. However, if you look at the duties and functions, it turns out that they have a positive impact as social control. With this, the government should provide quality shows that educate and prohibit shows that make sense and are not at all educational like soap operas that indulge nakedness and then immediately follow up on illegal cases and provide sufficient punishment to create a deterrent.

Third, community institutions, the community as a social control institution should be more sensitive and responsive to everything that exists within its territory. Reinforcing social control in society. It is undeniable that what makes teenagers free to do anything is due to the weakening of social control from the family and community environment. For example, there is a pair of courting actors whose parents are allowed to be alone together in the room. Even though adultery does not occur, it can trigger more actions to be carried out on other occasions and in other places. *Fourth*, the school environment as a second home is expected to have activities that strengthen faith and provide education about the dangers of free sex, abortion, etc.

The fifth and last is religious institutions which are systems of belief and important religious practices of society that have been carried out and formulated which are widely embraced and are seen as necessary and correct. Religious institutions are often believed by the public to be agents of social control which are very effective for reducing, controlling the number of deviant behaviors which are increasingly complex because religious teachings themselves are values and moral values which are also adopted by law in making a certain regulations in overcoming the many deviant behaviors in society. And this is a more effective solution. Because in essence when we fear God and realize the truth that whatever we do God is all-seeing, of course with that our morals will be guarded wherever they are.

4. CONCLUSION

The government made laws that allow rape victims to have abortions to protect rape victims who are likely to experience more severe psychological trauma due to the victim's pregnancy with certain conditions that have been mandated by law. This law also protects rape victims who usually use the illegal abortion route. Because illegal abortions are carried out by unprofessional parties and illegal abortions often result in death.

However, in the field this law has not been fully effective in society, seen from the prevalence of illegal abortions and abortion patients are not a criterion permissible by law for abortions. Control is divided into two, namely personal and social. To prevent unwanted pregnancies, personal and social control must be synergized. If personal control cannot be controlled, then social control should control group members not to commit social deviance. In this case, this includes families, schools, law enforcement and finally, social control from religion because it is a very effective agent of social control. These values and norms originate from a clean heart and a pure soul who also only believe that all human actions are under God's supervision, obedience and obedience that give birth to fear of things that are prohibited in religion so that deviations are avoided.

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