

The Criminal Responsibility in Cases of Child Abortion

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Abstract. *This study analyzes criminal liability in cases of abortion carried out by minors and considers whether the immature age can be a reason for the elimination of criminal liability. Given that children are in a vulnerable position and often do not understand the legal consequences, social and economic factors such as family pressure, partners, or community stigma also influence their decisions. Using qualitative methods, this study examines legal aspects based on court decisions and regulations in Indonesia and compares legal approaches in other countries. The results of the study show that although children have special legal protection, this does not automatically eliminate criminal liability, except in certain conditions such as coercion or unconsciousness. In many cases, children who have abortions are actually victims of exploitation or sexual violence, so they need protection more than punishment. Therefore, this study emphasizes the importance of legal policy reform that pays more attention to psychological and social aspects, so that the justice system is not only oriented towards punishment, but also towards the restoration and protection of children's rights.*

Keywords: *Abortion; Criminal; Liability; Protection.*

1. Introduction

Abortion is one of the acts that has serious legal implications in Indonesia. Based on Law No. 36 of 2009 concerning Health and the Criminal Code (KUHP), abortion is prohibited, except in certain conditions that have been legally determined, such as in cases of rape or in medical emergencies that can threaten the mother's life. However, in reality, abortions still occur frequently, especially among teenagers and children. Ignorance of the law, social pressure, and lack of access to reproductive education are some of the factors that contribute to the high rate of illegal abortions.

Abortion cases involving children raise complex legal issues. On the one hand, children are considered individuals who are still in the development stage and do not yet have a perfect understanding of the law. However, on the other hand, the act of abortion is still categorized as a criminal act that can be subject to legal sanctions. This then becomes a debate, whether a child who has an abortion should be subject to criminal penalties like adults or should be given special treatment by considering age factors and psychological conditions. Several countries have adopted a softer approach to children who have abortions, while Indonesia still applies fairly strict criminal provisions to this case.

In the Indonesian legal system, children in conflict with the law receive special treatment that is different from adults, as regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. This law emphasizes the restorative justice and diversion approaches as a form of resolving criminal cases involving children. However, in abortion cases, it is often difficult to determine whether a child is entitled to an expungement of the criminal sentence or must still be held responsible for his or her actions. The absence of regulations that specifically regulate abortion in children complicates the judicial process, so that judges' decisions often depend on individual interpretations of the case being handled.

Based on the Decision of the Kediri District Court Number --/Pid.Sus/2024/PN.Gpr, this case involved a 20-year-old male defendant who was charged with committing an abortion on a minor girl. In this case, the defendant was known to have obtained and given abortion drugs to the victim, who then had a miscarriage in a boarding house. This action was carried out without the supervision of a legitimate medical professional, thus endangering the victim's health and violating applicable legal provisions.

The defendant was charged under Article 77A Paragraph (1) Jo. Article 45A of Law No. 35 of 2014 concerning Child Protection. This article regulates the prohibition of carrying out abortions that are not in accordance with legal provisions, especially if they involve minors. In this decision, the judge imposed a criminal sentence on the defendant by considering various aspects, including his active role in obtaining and providing abortion drugs and his level of involvement in the act.

In psychological studies, the development of minors does not yet allow them to have a full understanding of the consequences of their actions. Therefore, in the criminal law system, there is a mechanism that allows for reduced sentences or even the elimination of criminal penalties for children who are proven to not have adequate legal capacity. However, in the case of abortion, other factors such as social pressure, the environment, and the influence of others must also be taken into account in determining the criminal responsibility of a child. For example, a child who is forced to have an abortion due to pressure from family or a partner should receive greater legal protection compared to a child who consciously has an abortion without any element of coercion.

Abortion cases involving children are a complex social issue, especially because many of them occur as a result of sexual violence or exploitation experienced by the victim. Social, economic, and cultural factors often play a role in this situation, where girls who have abortions are not the main perpetrators, but rather victims of circumstances that force them to make this decision. Pressure from the environment, social stigma, and lack of access to reproductive health education and child-friendly health services further worsen their situation. In some cases, children involved in abortions may face threats, pressure from family, or even fear of social punishment that can damage their future. Therefore, the debate about the legal status of children in this situation becomes very relevant, namely whether they should still be considered perpetrators of criminal acts or should be given status as victims who need legal protection.

The overly rigid legal perspective tends to view abortion as a criminal offense without considering the specific conditions behind it. However, many child protection agencies and human rights activists argue that children who experience situations like this should receive psychological and

social rehabilitation, not criminal punishment. Punishing children who have experienced trauma due to violence or exploitation can worsen their mental condition and hinder the recovery process. Therefore, a more humanistic and restorative justice-based approach is needed to handle cases like this, so that child victims can receive adequate protection and support in dealing with the psychological and social impacts they experience.

This study will discuss the legal aspects related to the criminal responsibility of children in abortion cases by conducting an in-depth review of court decisions that have been handed down in similar cases. One of the decisions that will be the main focus of this study is the Kediri District Court Decision numbered --/Pid.Sus/2024/PN.Gpr, which will be studied as a case study to provide a more comprehensive understanding of how the justice system in Indonesia handles abortion cases involving minors. This decision is interesting to study because it not only reflects how criminal law is applied in the context of children who have abortions, but also illustrates how factors such as age, psychological conditions, and the child's social background influence the considerations and decisions taken by the judge in the case. In addition, this study will also explore further the possibility of eliminating or reducing criminal penalties for children who have abortions, especially by considering legal aspects related to age and psychological conditions that may influence the decisions and actions they take in the situation.

With this study, it is hoped that a more just legal approach can be found in handling abortion cases involving children. An approach that not only focuses on the law enforcement aspect, but also considers the social and psychological factors behind the child's actions. Legal reform is needed so that existing regulations are more adaptive to situations involving children as perpetrators or victims of abortion. Therefore, this study will provide recommendations on how legal policies can be more effective and humane in handling similar cases in the future. It is necessary to consider revising regulations that allow for the elimination of criminal penalties for children under certain conditions, as well as strengthening education and rehabilitation programs for children involved in abortion cases so that they do not experience discrimination or prolonged trauma due to the legal decisions applied to them.

2. Research Methods

This study uses a qualitative research method with a normative legal approach and case studies. The normative legal approach is applied to analyze various laws and regulations related to abortion and criminal liability of children in Indonesia. Meanwhile, the case study was conducted by reviewing the Kediri District Court decision numbered --/Pid.Sus/2024/PN.Gpr as the main material in understanding how the law is applied to children involved in abortion cases.

The data sources in this study consist of primary and secondary data. Primary data were obtained from court decision documents, while secondary data were collected from various legal literature, academic journals, and applicable laws and regulations. Data collection techniques were carried out through document studies by examining in depth the text of court decisions, relevant laws, and supporting legal studies. Data analysis in this study used a descriptive-analytical approach, namely by describing and analyzing the application of law in the cases studied. In addition, this study also applies the legal interpretation method to understand how judges interpret the legal rules in the decision and consider aspects that influence decisions related to children who have abortions.

To maintain data validity, this study applies source triangulation techniques by comparing the results of the analysis of court decisions with legal studies from various academic literature and the opinions of legal experts. Thus, this study is expected to provide broader insights into the criminal liability of children in abortion cases and consider various legal and social aspects underlying the case.

3. Results and discussion

The Kediri District Court decision with number --/Pid.Sus/2024/PN.Gpr revealed that the defendant, a 20-year-old man, was charged with forcing the underage victim to have an abortion. The defendant asked the victim to consume abortion drugs obtained illegally. The lack of access to adequate health services caused the defendant to seek his own solution without legal medical assistance. Economic factors and fear of social stigma were the main reasons that drove the defendant to pressure the victim to have an abortion without considering the legal and health impacts. In addition, a lack of understanding of reproductive health played a role in the defendant's actions, who was unaware of the medical risks and legal consequences of his actions.

The victim's decision to have an abortion did not come entirely from her own will, but rather due to pressure from the defendant who was not ready to face the responsibilities of being a parent. In the trial, the judge sentenced her to seven years in prison and a fine of Rp1,000,000,000. If the fine is not paid, the defendant must serve three months in prison. This case raises questions about the effectiveness of the juvenile justice system in handling cases related to reproductive health and the protection of children's rights.

In considering the verdict, the judge took into account several main factors, including:

1. Psychological conditions: The victim's psychological factors are an important aspect in assessing the extent to which environmental pressure and trauma influence her decision to have an abortion. Children involved in cases like this are often in an unstable emotional state and are vulnerable to the influence of family, partners, or social pressures that consider pregnancy outside marriage as something shameful.
2. Social background: The social environment of the victim and the accused is a consideration in determining their level of involvement and responsibility in this incident.
3. Level of involvement in criminal acts: Although minors receive legal protection in the Indonesian criminal justice system, they can still be subject to sanctions if they have sufficient legal awareness to understand their actions.

In some cases, children are still sentenced to criminal penalties if they are proven to understand the consequences of their actions. However, this approach is still a debate in the juvenile justice system in Indonesia, especially in abortion cases which are often influenced by external factors, such as pressure from partners, family, or social environments that are less supportive of early pregnancy. In this case, the judge used Article 77A Paragraph (1) Jo. Article 45A of Law No. 35 of 2014 concerning Child Protection as the basis for legal considerations in issuing a verdict.



If a child has an abortion without fully understanding the legal implications and medical impacts, the justice system should prioritize a rehabilitative approach rather than just punishment. Many children who have abortions are in a depressed psychological state and do not have access to adequate reproductive health information and services. Therefore, in addition to considering the child's legal awareness, judges also need to review fairer and more humane policies in handling similar cases.

The legal decision taken should not only be punitive, but also provide constructive solutions that can help the child to build his/her future. A multidisciplinary approach involving legal, health, psychological, and social aspects is essential in handling abortion cases involving children. Thus, they can get the right assistance and support to prevent similar incidents in the future.

The main issue in cases of abortion by minors is the extent to which children understand the actions they are taking and the external pressures they face. Children's decisions to have abortions are often not simply personal desires, but the result of various social, economic, and cultural pressures. In many cases, pregnancy outside marriage is seen as something shameful by the family, so that pregnant girls are often forced to abort illegally. The lack of access to information and safe reproductive health services leaves children with little choice but to take steps that risk their own safety.

In addition, many girls who have abortions are in difficult situations, such as being victims of rape or sexual exploitation. They are often reluctant to report the incident for fear of social stigma or threats from the perpetrator. Pressure from the surrounding environment worsens the situation, leaving the child feeling isolated and with no other alternative but to have an abortion. In dealing with cases like this, it is important for the legal system to prioritize protection and a more humane approach. Rather than imposing heavy penalties, an approach that focuses more on education, psychological support, and providing access to safe reproductive health services will be more effective in protecting children from greater risks in the future.

In some situations, pregnancies resulting from sexual exploitation often involve individuals who have power over the victim, such as family members or parties who have economic control over the child. This makes it difficult for victims to fight back or seek legal assistance. This situation creates a dilemma in the legal system, namely between enforcing criminal sanctions for abortion or providing greater protection for minors who are victims. On the one hand, criminal law strictly prohibits abortion and stipulates sanctions for perpetrators. However, on the other hand, children who have abortions are often in conditions that they did not choose. Therefore, a legal approach is needed that is more oriented towards restorative justice, which not only considers abortion as a violation of the law, but also considers the social and psychological aspects behind it. With this approach, the legal system in Indonesia can be more adaptive in handling abortion cases involving minors, so that justice is not only based on punishment, but also includes the protection of children's rights.

In the decision Number --/Pid.Sus/2024/PN.Gpr, it was discovered that the victim experienced pressure from her partner who did not want the pregnancy. This pressure was not only emotional, but also in the form of direct threats that influenced the victim's decision. Communication between the defendant and the victim revealed that the victim had wanted to tell her parents about the pregnancy, but the defendant refused because he was afraid of the



possible consequences, such as being expelled from school or rejected by the family. Social pressure like this often makes children choose extreme paths, including having abortions in unsafe conditions. Many children who experience pregnancy outside of marriage face the risk of being thrown out of the house, being verbally abused, or even experiencing physical violence if they choose to continue the pregnancy.

Abortion by children cannot be simply considered a criminal act, but must be seen in a broader context, including social, psychological, economic, and legal factors that contribute to the decision. Pressure from partners, family, or the surrounding environment often worsens the situation, especially if the child does not have access to adequate assistance, such as legal aid, psychological support, or proper medical services. In many cases, the decision to have an abortion is not purely the defendant's desire, but the result of coercion, helplessness, and limited choices due to an unsupportive environment. Therefore, in handling abortion cases involving children, the justice system should not only emphasize the aspect of punishment, but also consider external factors that influence their decisions. Law enforcement that only focuses on imposing sanctions can lead to injustice, especially for children who are in vulnerable situations and have no control over their own decisions. Therefore, a more just, humane, and child protection-oriented legal approach is needed, so that children in difficult situations are not only seen as perpetrators of criminal acts, but also as individuals who need protection and support from various parties.

To create a fairer justice system, a multidisciplinary approach needs to be implemented by involving various competent parties, such as psychologists, social workers, and medical personnel, in order to provide a more comprehensive solution in handling similar cases. The government and related institutions must also ensure that the policies implemented are more inclusive and responsive to abortion cases involving children. This effort can be done by improving reproductive health education programs, providing more affordable access to psychological consultation services, and more effective legal protection mechanisms for children who experience pressure from their surroundings. With these concrete steps, it is hoped that abortion cases involving children can be handled with a wiser approach, not only oriented towards punishment, but also towards more holistic prevention and protection.

In many cases, pressure from a partner who does not want to take responsibility for the pregnancy is the main factor that drives a child to have an abortion. Some male perpetrators even make financial threats or refuse to provide moral support if the victim chooses to give birth. This condition is further exacerbated by the lack of access to adequate social support, so that children in this situation often have no place to seek protection or legal assistance that can provide alternative solutions. Therefore, although the defendant in this case is legally responsible for his actions, social and psychological aspects must be the main considerations in determining the sanctions given. In an ideal legal system, law enforcement officers not only consider the criminal elements in a case, but also review how social factors and psychological pressures influence the defendant's decision. It is important to introduce more flexible legal mechanisms, such as rehabilitation programs and psychological assistance for children who face similar cases. This step aims to ensure that children who have abortions are not immediately punished without considering the factors behind their actions, but instead receive protection and support so that they can return to a safer and more stable environment.

In the juvenile criminal justice system in Indonesia, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System provides an alternative in the form of diversion for children in conflict with the law. Diversion is an approach that prioritizes the principle of restorative justice, which focuses more on the recovery and rehabilitation of children than on the imposition of criminal sanctions. The main objective of this concept is to prevent children from experiencing negative impacts from the criminal justice system that can hinder their psychological and social development. In addition, diversion is also designed to prevent children from the stigmatization that often attaches to individuals who have served criminal sentences, especially in cases with complex social and moral dimensions, such as abortion.

Diversion serves to reduce the negative impact of imprisonment on children and ensure that they receive appropriate rehabilitation. Many children serving criminal sentences in correctional institutions experience severe mental stress, lose access to proper education, and are even at risk of being exposed to the negative influences of a criminal environment. Therefore, diversion is a more constructive solution by providing mechanisms such as rehabilitation programs, re-education, and social and psychological assistance.

Diversion not only helps children to correct their mistakes, but also prevents them from getting caught up in risky behavior in the future. However, in practice, the application of diversion in abortion cases is still limited due to social stigma and pressure from society that considers abortion as an unacceptable act. Most people still hold moral values that consider abortion to be against religious and cultural norms, so that a softer legal approach is difficult to apply to children who have abortions. As a result, diversion is often ignored as a resolution option, even though in many cases, children involved in abortions are in a vulnerable condition and need further protection. Therefore, a paradigm shift in society is needed as well as adjustments to legal policies so that diversion can be applied more often in cases of abortion in children, taking into account the psychological, social, and economic factors behind it.

From a child rights perspective, protection of children involved in abortion cases must be a priority, considering that they are often in vulnerable situations and at risk of pressure from various parties, including family, partners, and society. Children involved in criminal cases, including abortion, do not always act of their own free will, but are often influenced by external factors such as emotional pressure, limited access to reproductive health information and services, and lack of social support. In many cases, children who experience premarital pregnancies also face severe social stigma, which can lead to isolation, discrimination, and even physical and psychological violence.

Therefore, legal policies in handling abortion cases involving children must pay attention to the balance between law enforcement and protection of children's rights, as regulated in various national and international legal instruments that guarantee child welfare. The criminal justice system should not only be oriented towards punishment, but must also prioritize a more holistic and humane approach by considering the social and psychological aspects of children. This includes the provision of adequate legal assistance, psychological counseling services to help children deal with trauma, and social support so that they can continue their lives without having to bear a heavier burden in the future.

The government and various related institutions must also play an active role in creating a more supportive environment for children who face extramarital pregnancies, for example by increasing access to reproductive health education, strengthening the social protection system, and providing rehabilitation mechanisms that allow children to get a second chance at living a better life. With a more inclusive approach and oriented towards protecting children's rights, it is hoped that abortion cases involving children can be handled more fairly and wisely, by considering aspects of child recovery and empowerment, not just aspects of criminal law. Then the question is "Why Are Girls Not Made Defendants?". In this case, girls who experience pregnancy are not made defendants by considering the following legal factors:

1. **Status as Victims:** Children who become pregnant out of wedlock are often viewed as victims who are entitled to protection under the Child Protection Act. In Indonesian criminal law, children in vulnerable situations are more likely to be treated as victims rather than as perpetrators of criminal acts.
2. **The Defendant's Role in the Abortion Act:** Based on the trial facts, the defendant had a dominant role in the initiation and implementation of the abortion act. He was the one who searched for and purchased the abortion drug through social media, gave the drug to the victim, and determined the place where the victim would consume the drug. In addition, the defendant was also involved in the disposal of the fetus after the abortion process took place. This shows that the defendant had greater control over the act, while the victim was in a more passive position.
3. **Pressure on the Victim:** The court ruling shows that the victim initially did not agree to have an abortion and had suggested that her pregnancy be reported to her parents. However, the defendant refused and put pressure on her by conveying social threats, such as the possibility of being expelled from school and other impacts that could harm her future. In this condition, the victim is considered more as an individual under pressure than as a legally responsible perpetrator.
4. **Principles of Child Protection in the Criminal Justice System:** Law No. 11 of 2012 concerning the Juvenile Criminal Justice System mandates that every child in conflict with the law must receive special treatment. In cases of extramarital pregnancy and abortion, if a child acts under pressure or influence from another party, the legal system prioritizes protection and rehabilitation over punishment.
5. **Psychological and Social Aspects of Victims:** Victims experience severe emotional stress due to unwanted pregnancy, social stigma, and lack of support from the environment. In addition, their psychological condition after the abortion is also a concern, as shown in the *visum et repertum* which confirms the physical impact of unsafe childbirth. Therefore, the justice system is more oriented towards protecting victims than punishing them.

Overall, the legal approach in this case focuses more on protecting girls as victims, rather than as perpetrators. However, this aspect is still a debate in the juvenile criminal law system in Indonesia, especially in cases involving premarital pregnancy and abortion.

The Convention on the Rights of the Child, ratified through Presidential Decree Number 36 of 1990, affirms that every child has the right to receive protection and special treatment in the criminal justice system. Therefore, punishment for children who have abortions should focus more on rehabilitation than imprisonment, in order to remain in line with the principles of child

protection. Some countries, such as the Netherlands and Sweden, place more emphasis on sexual education, counseling, and access to reproductive health services for children than on criminal penalties. This approach aims to prevent unwanted pregnancies and ensure that children receive adequate support.

1. From a sociological perspective, abortion actions carried out by children are often not just individual decisions, but are also influenced by external factors, such as pressure from family, partners, or social environments that are less supportive of early pregnancy. Therefore, the criminal justice system must consider these factors so that the punishment given still reflects the principle of justice.
2. A multidisciplinary approach is essential in handling cases of abortion in children. From a legal perspective, the policies implemented should not only be repressive, but should also prioritize rehabilitative aspects.
3. From a health perspective, children must have access to safe reproductive health services to prevent health risks from unsafe abortion practices.
4. From a psychological perspective, counseling and psychological support are very important to help children overcome the emotional stress they experience.
5. From an educational aspect, an understanding of reproductive rights must be provided so that children have better knowledge about the consequences of early pregnancy and the alternatives available, so as to prevent illegal abortion practices in the future.

Thus, legal policy reform is a very necessary step so that children in difficult situations can obtain better legal protection. In addition, a more inclusive approach is also needed in handling cases of abortion in children, involving various stakeholders, such as families, schools, communities, and social institutions. With more holistic support, children who experience extramarital pregnancies can receive more comprehensive protection and guidance for a better future.

4. Conclusion

This study discusses the criminal responsibility of children in abortion cases in Indonesia, highlighting the Kediri District Court decision number --/Pid.Sus/2024/PN.Gpr. In many cases, children who experience extramarital pregnancies are in difficult conditions due to pressure from their partners, families, or communities, and have limited access to adequate reproductive health information and services. Therefore, the application of the principles of restorative justice and the diversion approach should be prioritized in the justice system to ensure that children receive the protection, assistance, and support needed to live a better life in the future. A legal system that is oriented towards child rehabilitation and protection needs to be implemented through comprehensive policy reforms, including revising laws and regulations related to abortion and child protection, increasing reproductive health education to prevent unwanted pregnancies in adolescents, and strengthening rehabilitation mechanisms for children in conflict with the law so that they obtain adequate psychological and social recovery. By adopting a more humanistic legal approach based on the protection of children's human rights, it is hoped that the justice system can handle abortion cases involving children more fairly, not only emphasizing the aspect of punishment, but also on more effective recovery and prevention efforts. Based on the analysis above, it can be concluded that the main reason the girl in this case was not made a defendant was because of her position as a victim who was in a vulnerable condition and was under pressure from the defendant. In the Indonesian criminal law system, children who are in conflict

with the law are not immediately considered perpetrators, especially if there are external factors that influence their decisions. Therefore, it is necessary to improve policies in handling similar cases so that aspects of child protection are maintained without neglecting the principle of justice for all parties involved.

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