

An Analysis of the Criminal Liability of Medical Personnel in Illegal Abortion Cases in Indonesia

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Abstract. *The Preamble of the 1945 Constitution affirms the state's objectives to protect all citizens, promote welfare, enlighten the nation, and uphold justice. Law as the state's pillar guarantees order and protection of individual rights, including the fetus's right to life. The phenomenon of illegal abortion arises from social pressures, unplanned pregnancies, and lack of education. Law enforcement and protection of women's reproductive rights are crucial to prevent illegal abortion while maintaining justice and social welfare. The research aims to describe and analyze criminal liability of medical personnel in illegal abortion cases in Indonesia and to describe and analyze legal principles relevant to determining their liability under criminal law doctrine. This research applies a qualitative legal method with a normative juridical approach and descriptive character. Secondary data are obtained from primary, secondary, and tertiary legal materials through literature study. Qualitative descriptive analysis is employed to examine criminal liability of medical personnel in illegal abortion cases in Indonesia systematically and comprehensively. The research results show that criminal liability of medical personnel in illegal abortion cases in Indonesia is strictly regulated in the Criminal Code Articles 346 to 349, and Law No. 17 of 2023 on Health prohibits abortion, except as stipulated in the Criminal Code. Articles 427–428 of the Health Law impose imprisonment up to 15 years, with aggravation for medical personnel and potential revocation of practice licenses. Government Regulation No. 28 of 2024 as implementing regulation allows safe abortion in cases of pregnancy due to sexual violence, medical emergencies, and pregnancies up to 14 weeks under the new Criminal Code. Comparisons with other countries, such as Singapore allowing abortion up to 24 weeks with mandatory counseling and Cambodia permitting abortion up to 12 weeks for any reason, show Indonesia's stricter regulation. Based on MUI Fatwa No. 4 of 2005, abortion for rape victims is permissible before the fetus reaches 40 days due to emergency grounds. The Indonesian Medical Code of Ethics emphasizes that illegal abortion constitutes both ethical and legal violations, underlining the principles of non-maleficence, protection of life, and the purpose of law enforcement to deter and prevent unsafe abortion practices. The relevant legal principles in determining criminal liability of medical personnel performing illegal abortions under criminal law doctrine are that criminal law principles serve as essential guidelines, including the principle of legality, principle of fault, principle of no crime without act, principle of proportionality, and principle of protection of legal interests. The principle of legality*

ensures punishment only when stipulated by law, the principle of fault requires intent or negligence, and the principle of no crime without act demands proof of actual conduct. The proportionality principle guarantees balance between punishment and culpability, while the principle of protection of legal interests safeguards the fetus's right to life, maternal health, public order, and the integrity of the medical profession.

Keywords: *Abortion; Criminal Law; Liability; Medical Personnel.*

1. Introduction

The preamble to the 1945 Constitution of the Republic of Indonesia contains the primary objectives of the state, namely to protect the entire Indonesian nation and its entire homeland, to advance the general welfare, to advance the nation's intellectual life, and to contribute to the establishment of world order based on independence, eternal peace, and social justice. This formulation serves as the moral and constitutional foundation for the administration of government and the formation of laws and regulations. This objective is not merely declarative, but serves as a policy direction that must be realized through the legal system, public policy, and concrete government actions in regulating, protecting, and promoting the welfare of society as a whole, in accordance with the mandate of the constitution.

Indonesia, as a state based on the rule of law based on Pancasila, makes legal values a fundamental principle. Article 1 paragraph (3) of the 1945 Constitution affirms that "Indonesia is a state based on the rule of law," which implies the obligation of all citizens and government officials to obey the law without exception. This principle places the law as the highest authority, so that no party is above the law. Every action has definite legal consequences, in order to create an orderly, harmonious, and prosperous society as mandated in the Preamble to the 1945 Constitution, while also reflecting the supremacy of just law.¹

Law is an abstract concept that cannot be touched or physically seen, yet it has a real binding force in social life. Its existence serves as a guideline that regulates interactions between people, ensuring that every action is in line with prevailing norms. In social reality, the diversity of individual interests, values, and goals often gives rise to potential friction. Law serves to establish boundaries and provide direction so that these differences do not escalate into destructive conflict. Thus, law serves as a pillar that supports order and provides a sense of security for every member of society.

The role of law in social dynamics extends beyond regulating behavior to maintaining balance and justice amidst diversity. When potential conflicts arise due to differing interests, the law provides a means of peaceful and measured resolution. This mechanism allows all parties to receive equal protection under the law. Societal stability can be maintained if the law is applied consistently and fairly, regardless of the background of the parties involved. The presence of law is not merely a normative text, but an active instrument that ensures long-term social harmony.

2. Research Methods

This research was conducted using a qualitative legal approach, relying on secondary data as the primary source. This data includes primary, secondary, and tertiary legal materials. All

¹Sri Endah Wahyuningsih, "The Urgency of Reforming Indonesia's Material Criminal Law Based on the Values of Belief in the One Almighty God," *Journal of Legal Reform*, Volume I, No. 1, January–April 2014

legal materials were collected in a structured manner, analyzed, and then summarized to identify connections to the research's focal issues.²

3. Results and Discussion

3.1. Criminal Liability of Medical Personnel in Illegal Abortion Cases in Indonesia

Unlawful abortion in Indonesia is considered an unlawful act. Illegal abortion practices, even performed by medical personnel, are still classified as criminal acts because they violate statutory provisions. From a criminal law perspective, this violation not only touches on professional ethics but also concerns the protection of the fetus's right to life. Law enforcement against medical personnel involved is crucial to ensure that health services are carried out in accordance with regulations and are not misused for personal gain.³

The medical profession has a high moral and legal responsibility in carrying out its duties. Violations such as illegal abortions can be categorized as white-collar crimes, given that they are committed by individuals with authority and expertise in the health sector. This type of crime is usually committed by exploiting positions of trust and privilege held by patients and the public. Legally, these acts cause harm not only to the individual victims but also undermine public trust in healthcare services.

White-collar crimes committed by medical professionals can encompass various forms of misconduct, including healthcare fraud. This form of fraud occurs when medical professionals intentionally engage in actions that violate medical and legal procedures in order to gain a specific advantage. This can involve concealing information, manipulating medical data, or violating applicable legal procedures. Illegal abortions performed outside the scope of the law are one form of misconduct that falls into this category.

The primary characteristics of white-collar crime are the abuse of trust and violation of professional integrity. In cases of illegal abortion, the medical personnel involved typically do not use physical violence, but rather exploit their medical knowledge to carry out the illicit act. This act can be committed individually or involve a network within a healthcare facility. The profits derived from this practice can be personal or used for business purposes, resulting in widespread negative impacts on the healthcare system.⁴

Criminal liability for medical personnel involved in illegal abortions is regulated by Indonesian criminal law. Law enforcement serves not only as a means of punishment but also as a preventative measure to prevent similar violations from recurring. Strict legal proceedings are expected to provide a deterrent effect while maintaining the integrity of the medical profession. Therefore, all healthcare workers are expected to continue practicing medicine in

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accordance with the code of ethics, laws and regulations, and the humanitarian principles that underpin their profession.

Medical personnel who perform illegal abortions can be held criminally liable if proven to have committed errors in their practice. These errors are assessed based on legal norms and societal perceptions prevailing at the time the act was committed. In the context of criminal law, actions by medical personnel are considered to violate provisions governing the protection of the right to life. This assessment takes into account not only technical medical aspects but also established professional moral and ethical values. Such violations have the potential to undermine public trust in healthcare services.

The definition of a crime includes the act of doing or failing to do something that contains an element of wrongdoing and is prohibited by law. In the case of illegal abortion, the element of wrongdoing may arise from the deliberate violation of legal provisions for a specific purpose. The medical personnel involved are deemed to have misused their expertise for unlawful purposes.⁵ Criminal sanctions are imposed to restore legal order and provide protection for violated rights, including the right to life of fetuses who are victims of such actions.

Criminal penalties imposed on medical personnel in illegal abortion cases serve both preventive and repressive functions. The preventive function aims to prevent the recurrence of similar violations by providing a deterrent effect on the perpetrators and other parties. The repressive function provides appropriate retribution for legal violations. Criminal law views this as a measure to maintain social order. Consistent enforcement will strengthen public confidence that the law applies equally to all, including professionals with specific responsibilities in the health sector.

The element of wrongdoing in illegal abortion cases is not only viewed from the technical perspective of medical procedures, but also from the perspective of social norms. These norms serve as the benchmark for determining whether an act deserves criminal responsibility. Medical personnel who violate regulations are considered not only to harm patients but also to violate human values. Societal normative views play a crucial role in shaping legal judgments, as law is fundamentally designed to protect public order and ensure the common good.⁶

3.2. Relevant Legal Principles in Determining the Criminal Liability of Medical Personnel Who Perform Illegal Abortions According to Criminal Law Doctrine

Criminal law principles play a crucial role in assessing the criminal liability of medical personnel performing illegal abortions. Within the context of criminal law doctrine, several fundamental principles serve as guidelines, such as the principle of legality, the principle of

⁵Amir Ilyas. *Criminal Liability of Doctors for Medical Malpractice in Hospitals*. Rangkan Education, Yogyakarta, 2014

⁶Ani Purwanti, Marzellina Hardiyanti. "Strategies for Resolving Acts of Sexual Violence Against Women and Children Through the Sexual Violence Bill." *Justitia Journal*, Kencana, Jakarta, Vol. 47, No. 2, 2018

culpability, the principle of no punishment without action, and the principle of proportionality of punishment. The application of these principles aims to ensure that criminal penalties imposed on medical personnel are based on legal certainty, justice, and the protection of human rights for both perpetrators and victims.

a. Principle of Legality (*Nullum delictum, nulla poena sine praevia lege poenali*)

The principle of legality is a fundamental principle in criminal law that protects individual freedom from the threat of arbitrary punishment. In practice, this principle ensures that a person can only be punished if their actions have been regulated as a crime in statutory regulations before the act was committed. The existence of this principle also encourages the state to formulate clear, firm, and written legal regulations so that the public can understand the boundaries of behavior that are permitted and prohibited by law. Without the principle of legality, legal certainty will be compromised.⁷

The application of the principle of legality is particularly relevant in cases of illegal abortion involving medical personnel. Criminal penalties can only be imposed if the act meets the elements outlined in applicable legal provisions. Articles 346 to 349 of the Criminal Code (KUHP) detail the forms and penalties for abortion perpetrators. Furthermore, Article

75 to 77 of Law Number 36 of 2009 concerning Health provide strict legal limitations regarding abortion, including exceptions permitted by law.

These legal provisions make it clear that not all terminations of pregnancy are automatically criminalized. There are specific circumstances in which they are permitted, such as abortions performed to save the mother's life or when the fetus has a serious genetic abnormality. Therefore, medical personnel who perform abortions outside these provisions are potentially subject to criminal liability. This principle also encourages medical personnel to always exercise caution and adhere to applicable legal procedures before making medical decisions regarding pregnancy termination.

The principle of legality serves to prevent retroactive criminalization, that is, the criminalization of an act that was not yet criminalized at the time it was committed. In the context of illegal abortion, this means that a medical professional cannot be punished if, at the time of the act, the law did not yet define it as a criminal offense. This protection is part of the principle of a state based on the rule of law that respects human rights, particularly the right to fair and proportional legal certainty.⁸

The legal certainty provided by the principle of legality creates a sense of security for the public, particularly for the medical profession. Medical personnel can carry out their duties without fear of criminal prosecution as long as they act in accordance with applicable

⁷Ratna Dewi Lestari, Suhandi Purwani. "Legal Protection for Female Abortion Sufferers from Rape Victims Against the Threat of Criminal Abortion." *MAGISTRA Law Review*, Vol. 1, No. 1, 2020

⁸Maria Ulfah Anshor. *Abortion Fiqh: A Discourse on Strengthening Women's Reproductive Rights*. Kompas, Jakarta, 2006

regulations. This also fosters legal awareness in medical practice, so that every medical procedure with legal risks, such as abortion, is always based on professional review and mature legal considerations. This creates a harmonious and mutually reinforcing relationship between the medical and legal professions.

Clear provisions in the Criminal Code and the Health Law also provide guidance for law enforcement officials in assessing illegal abortion cases. Law enforcement can prosecute based on facts that meet the criminal elements as stipulated in the law. This process prevents overly broad or subjective interpretations of the law that could harm certain parties. Consistent law enforcement based on the principle of legality will increase public trust in Indonesia's criminal justice system.

4. Conclusion

The criminal liability of medical personnel in cases of illegal abortion in Indonesia is strictly regulated in Articles 346 to 349 of the Indonesian Criminal Code and Articles 75 to 77 of the Health Law, which provide sanctions in the form of imprisonment, fines, and revocation of practice licenses for medical personnel involved. Exceptions are only permitted in cases of medical emergencies or pregnancy resulting from rape, with the requirement of a gestational age of six weeks and the approval of the medical team. Comparison with other countries, such as Singapore, which allows abortion up to 24 weeks with mandatory counseling, and Cambodia up to 12 weeks for all reasons, shows that Indonesian regulations are stricter. Based on the MUI Fatwa No. 4 of 2005, abortion for rape victims is permitted before the fetus is 40 days old for emergency reasons. The Indonesian Code of Medical Ethics affirms the prohibition of illegal abortion as an ethical and legal violation, emphasizing the principles of non-maleficence, protection of life, and the goal of law enforcement to provide a deterrent effect and prevent unsafe abortion practices. The relevant legal principles in determining the criminal liability of medical personnel who perform illegal abortions according to criminal law doctrine are the principles of criminal law as important guidelines in determining the liability of medical personnel who perform illegal abortions, including the principle of legality, the principle of fault, the principle of no punishment without action, the principle of proportionality, and the principle of protection of legal interests. The principle of legality ensures that punishment is only carried out when regulated by law, the principle of fault requires intent or negligence, and the principle of no punishment without action requires evidence of concrete action. The principle of proportionality ensures that the punishment is balanced with the level of fault, while the principle of protection of legal interests safeguards the right to life of the fetus, the health of the mother, public order, and the integrity of the medical profession.

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