

## Abortion Conducted by Rape victims

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### ABSTRACT

Law No. 36 of 2009 concerning Health states regulations that allow a person to have an abortion with two conditions, namely: indication of medical emergencies and pregnancy due to rape that can cause psychological trauma for rape victims. The highlight of the decriminalization of abortion is Article 75 of Law No. 36 of 2009 concerning Health, that basically abortion is prohibited, but there are exceptions, one of which is if the pregnancy is due to rape which can cause psychological trauma for rape victims.

**Keywords:** *Rape Victims, Abortion*

### 1. PRELIMINARY

The 1945 Constitution of the Republic of Indonesia (UUD 1945) is the constitutional basis of the Indonesian which is the basic law for each law under it. Therefore, in a country that adheres to constitutionalism, every behavior of state and community administrators is based on the constitution.

Article 1 Paragraph (3) of the 1945 Constitution explicitly states that Indonesia is a state of law. Thus, the Indonesian constitution has affirmed that Indonesia is a law-based country (*rechtsstaat*). The concepts of *rechtsstaat* and rule of law are related to nomocracy concepts which are etymologically derived from Greek vocabulary, namely *nomos* and *cratos*. The word nomocracy can be compared with *demos* and *cratos* or *kratien*. In democracy, *nomos* means norm, *cratos* means power. Determinant of organizer of power is the norm or law. The term nomocracy is basically closely related to the idea of legal sovereignty or the principle of law as the highest power.

Cicero, a Philosopher stated that law cannot be separated from society. Peace and justice from the community can only be achieved if the legal order has been proven to bring justice and can function effectively. "*Societas ibi ius*" or translated into "Where there is society there is law" is the words of Marcus Tullius Cicero, a philosopher, jurist, and political expert born in Rome. Cicero's words crossed the era; the sentence he stated about 19 centuries ago is still valid today.

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian people as intended in the Pancasila and the Preamble



of the 1945 Constitution of the Republic of Indonesia. Therefore, every activity and effort to improve the public health to the maximum extent is carried out based on the principle of non-discriminatory, participatory, protection, and sustainable which is very important for the formation of Indonesian human resources, increasing the resilience and competitiveness of the nation, and national development.

Criminology is a branch of criminal law that concentrates its study on understanding crime, including the factors of occurrence of a crime. While there have been criminal laws, criminal procedural law and criminal justice systems, criminology arises because experts feel dissatisfied with the arrangements contained in criminal law, criminal procedural law and the criminal system. Criminology has the scope of discussion, namely factors causing the occurrence of a criminal act and the influence of the environment on the perpetrator. Modern criminology tells us how difficult it is to clearly understand the causes of a crime problem. To ensure the potential or possibility of a victim who has suffered has become one of the factors in the occurrence of crime. The problem of crime is always an interesting problem, both before and after criminology has experienced growth and development like today.

Criminology and victimology are related. Criminology discusses broadly the perpetrators of a crime, while victimology is the study of victims of a crime. As discussed in 'Urgency for the Protection of Crime Victims' by the Department of Education, written by M. Brief Mansur, victimology is a missing part of criminology. In other words, victimology discusses parts that are not included in criminology studies. Many said that victimology was born because the emergence of the insistence of the need for victims' problems to be discussed separately.

Crime of rape as regulated in Article 285 of the Criminal Code is as follows: Anyone who by force or by threat forcing a woman who is not his wife to have sex with him, due to rape, is sentenced to imprisonment for a maximum of twelve years'.

Article 285 of the Criminal Code requires the necessity of having sexual intercourse with someone that is not the perpetrator's wife accompanied by threats of violence. Rape is characterized by the penetration of penis into the vaginal opening in sexual intercourse followed by physical threats and violence to the victim.

## **2. DISCUSSION**

Criminal law is one of the public laws that apply in Indonesia. The existence of criminal law has several objectives. There are two aims of criminal law: 1) To frighten, the existence of criminal law aims to frighten people not to conduct bad deeds (classical flow). 2) To educate people, the existence of criminal law aims to educate people who have done bad deeds so as not to repeat the act (modern flow).

According to classical flow, criminal law aims to protect individuals from state power or power of the ruler. According to modern flow, criminal law aims to protect people from crime. Thus, criminal law must pay attention to crimes committed and the state of criminals. According to the modern school, criminal law is influenced by criminological developments.

National goals are general policy lines that form the basis and at the same time the goal of achieving legal politics in Indonesia. These goals also form the basis and purpose of any legal reform efforts, including reform of Indonesian criminal law . The Third Criminology Seminar in 1976 concluded: "Criminal law should be maintained as a means of "social defense" in the sense of protecting the public against crime by repairing or rehabilitating the perpetrators without reducing the balance of individual interests (the perpetrators) and the community.

In one of the 1980 National Criminal Law Reform Symposium reports, it is stated: "In accordance with the politics of criminal law, the aim of punishment must be directed at protecting the public from crime and the balance and harmony of life in society by paying attention to the interests of society/state, victims and perpetrators". Thus, there are two objectives that criminal and criminal law want to achieve, namely "community protection" and "community welfare". Both goals are the cornerstone of criminal law and criminal law reform. In addition there are also goals to participate in creating world order in connection with the development of international crimes.<sup>1</sup> Based on the goal of "community protection", the purpose of criminal law enforcement can be divided into: (1) Protection of the public from anti-social actions that harm and endanger the community, the purpose of punishment is to prevent and overcome crime, (2) Protection of the public from its harmful nature someone, then the goal of punishment is to improve the perpetrator of the crime or try to change and influence his behavior in order to return to the law and become a good and useful citizen, (3) the protection of the community from abuse of sanctions or reactions from law enforcement or community members in general, the aim of punishment is to prevent the occurrence of ill-treatment outside the law, (4) the protection of the community from disturbance of balance or harmony of various interests and values as a result of crime, the enforcement of criminal law must be able to resolve the conflict arising by criminal acts, can restore balance and bring a sense of peace in society.

Community protection also includes specifically the protection of victims of crime, which surfaced after the second world war. Victims in this case also include victims of "abuse of power",

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<sup>1</sup> Kittichaisaree, *International Criminal Law*, Oxford University Press, 2001, p. 3. "International crime is such act universally recognized as criminal, which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the state that would have control over it under ordinary circumstances

who must obtain protection in the form of "access to justice and fair treatment, restitution, compensation and assistance".<sup>2</sup>

The term criminal comes from the Hindu Javanese language which means punishment, sorrow or sadness, while in Dutch it is called *straf*. To be criminalized means punished, courtship means everything that is not good, evil, condemnation means punishment. Thus, Criminal Law as a translation of Dutch language *strafrecht* is all rules that have orders and prohibitions that use sanctions (threats) punishment for those who break them.<sup>3</sup>

The punishment (criminal) is an issue that can be viewed from two sides: (1) In a general sense, it is concerning the establishment of a law which stipulates a set of criminal law sanctions (granting criminal law in abstracto). (2) In a concrete sense it is related to various bodies or departments which all support and carry out the criminal law system.<sup>4</sup>

Legal norms are regulations that govern certain actions, namely prohibited acts (*verbod*) or required (*gebod*). From their nature, legal interests can be divided into three groups as follows: (1) Individual interests: soul, body, honor and wealth, (2) the interests of society: peace and security (3) State interests: State security.<sup>5</sup>

The definition of criminal law in an objective sense or referred to as *ius poenale* is a criminal law which can be seen from the aspect of prohibitions on acts, prohibitions followed by a criminal threat for those who violate the prohibition. Thus, the definition of criminal law in an objective sense has the same meaning as material and formal criminal law. As formulated by the Hazewinkel Suringan, *ius poenale* is a number of legal regulations that contain prohibitions and orders or requirements whose violation can be sanctioned.

The definition of criminal law in a subjective sense or *ius poeniendi* as a subjective aspect of criminal law, is a rule that contains or concerning the rights or authority of the state: (1) To determine restrictions in an effort to achieve public order; (2) To impose (imposing nature) criminal law which manifests itself by imposing a penalty on the violator of the prohibition; and (3) To carry out criminal sanctions imposed by the state on the offender of the criminal law.

Criminal law is a science or knowledge that specifically studies one particular part of legal science in general: criminal law. Criminal law subjects are positive criminal law regulations, namely criminal law that applies at a certain time in a particular country. Thus, the object of criminal law in Indonesia is the laws that apply in Indonesia. The main tasks of criminal law are:

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<sup>2</sup> Van Dijk, Jan J.M. , *Introducing Victimology*, the 9th International Symposium Of The World Society Of Victimology, Amsterdam, 1997.

<sup>3</sup> Hilman Hadikusuma, *Bahasa Hukum Indonesia*, Bandung: Published by Alumni, 1992. p. 114

<sup>4</sup> Soedarto, 1977, *Hukum dan Hukum Pidana*, Alumni, Bandung, p. 50

<sup>5</sup> Satochid Kartanegara, *Tanpa Tahun, Hukum Pidana Kumpulan-kumpulan Kuliah*, Balai Lektur Mahasiswa, Jakarta, p. 80

studying and explaining principles that form the basis of positive criminal law regulations, studying and explaining the relationship between one principle with another, after understanding the relationship then placed in a systematics, so that it can be understood what is meant by what is meant by positive criminal law.

Legal subject (*rechtssubject*) is something that according to law has the right / authority to carry out legal acts, or anything that can carry rights and obligations under the law. According to Prof. Chainur Arrasjid, S.H. Legal subject is anything that according to law can be a supporter (can have) rights and obligations. According to Dr. Soedjono Dirdjosisworo, S.H. Legal subject or subject *van een recht*, that is "person" who has the right of a private person or legal entity who has the right or who commits a legal act.

From the definition of the legal subject above, it can be concluded that the legal subject is any creature that has the authority to own, acquire, and use legal liability rights. Legal subjects are divided into two:

First Person (*Natuurlijke Person*). Man is in a biological sense a symptom in nature, a biological phenomenon that is living things that have five senses and have a culture, whereas humans in a juridical sense are symptomatic in social life.<sup>6</sup>

Juridically there are two reasons which mention human reasons as legal subjects. First, humans have subjective and second rights, legal authority as supporting rights and obligations. Secondly, basically humans have rights, but not all humans have the authority and ability to do legal actions.

Second, Legal Entity (*Rechtsperson*). In legal relations in the midst of society, it turns out humans are not the only legal subject (supporting rights and obligations). There are still other legal subjects frequently called "legal entities" (*rechtspersoon*). As for what is meant by a legal entity are associations that can bear the rights and obligations. Having their own assets and can participate in legal traffic, can sue and be sued before a court. In short, it can be as a legal subject.

Criminal law is a normative discipline that studies crime in terms of law, or rules about crime. This study is about actions expressly referred to by law as a crime or violation, which can be subject to criminal penalties. Criminal law bases on probability to find a causal relationship due to crime in society. If there are no laws and regulations that contain penalties imposed on criminals or offenders for their actions, the action in question is not an action that can be punished (not an act of evil or not a violation). This view is based on the principle of *Nullum delictum, nulla poena sine pravia lege poenali*.

Criminal Law seeks to link evil deeds with the results of proving that he committed such actions to put criminal responsibility. Criminal law is more related to practice, because it is only

<sup>6</sup> Pipin Syarifin, Pengantar Ilmu Hukum (Bandung: CV Pustaka Setia, 1999), p. 62

used after the occurrence of an evil act, so it emphasizes repressive actions. The trial is a prosecutor's indictment which is generally prepared on the basis of information and external evidence.

Criminology seeks to gain knowledge and understanding of social phenomena in the field of crime that occurs in the community, or in other words why the defendant has committed an evil act. Criminology according to Enrico Ferri seeks to solve the problem of crime with positive reviews and social facts, crime including every act that threatens the collective and from the group that raises the defense reaction of the community based on its own considerations.

Criminology studies crime as a social phenomenon so that crime behavior cannot be separated from social interaction, meaning that crime attracts attention because of the influence of such actions that are felt in human relations. A person who is said to have committed evil if done against himself, for example taking his property to be enjoyed or deed is carried out on animals in free forest such as persecuting a wild boar he has captured.

Criminology emphasizes preventive actions, therefore the causes of the occurrence of a crime in the economic, social, cultural, legal and natural factors of a person are always sought, thus providing the right break through and satisfying results. Criminology has more to do with theoretical issues that can affect the legislative body to create a law that is in accordance with the sense of justice of the community and also influences the rights in passing a verdict on the accused. Criminology with the scope of its study involves: (1) a person who commits a crime, (2) the cause of a crime, (3). Prevents crime; and ways to heal a person who has committed a crime.

The object of Criminology is a person in conflict with social norms, while the object of criminal law violating legal order so that it automatically raises the notion of "Crime" according to Criminology and according to criminal law. Because Criminology is a science that stands alone in addition to criminal law, it has its own definition of what is called crime. Crime according to criminology is a human action in its conflict with several norms determined by society in the midst of human life. Crime is a human act and a social phenomenon.

Criminal law focuses its attention on proving a crime while criminology focuses its attention on the causes of crime. Criminology is intended to reveal the motives of the perpetrators while the criminal law is aimed at the relationship between the actions and their effects (Causality Relations). The motive factor can be traced to the evidence that reinforces the intention to commit crimes.

Van Bemmelen mentioned criminology as *faktuele strafrech twissens chaft* while criminal law as *normative strafrech twissens chaft*. Judging from the views and opinions about what criminology means by criminal law, it seems as if there is no connection.

The act of rape is a criminal act that has a sexual character that occurs when a human being forces another human to have sexual intercourse in the form of vaginal penetration with the penis, by force. In Indonesian dictionary, rape comes from the word *rape*, which means breaking or violating violence. Raping is defined as a process, method, rape or violence.<sup>7</sup>

The word rape comes from the Latin *rapere* which means stealing, forcing, robbing, or taking away<sup>8</sup>. In the past, rape crimes were often carried out to obtain a wife and rape crimes were not only in the form of copulation but all forms of attacks involving the genitals by means of violence and coercion by the perpetrator against the victim.

Crime of rape as stipulated in Article 285 of the Criminal Code is as follows: siapa Anyone who by force or by threatening to force a woman who is not his wife to have sex with him, due to rape, is sentenced to imprisonment for a maximum of twelve years.

Article 285 of the Criminal Code requires the obligation that any non-wife's body be accompanied by a threat of violence. Rape is indicated by the penetration of the penis into the vaginal opening in sexual intercourse accompanied by physical threats and violence to the victim.

Based on the description, rape is: (a) a sexual relationship that is prohibited with a woman without her consent. (b) unauthorized intercourse by a man against a woman carried out by coercion and contrary to the woman's will. (c) a sexual act committed by a man against a woman who is not his wife or without his agreement is done when the woman is afraid.

Judging from the motives of the perpetrators of criminal acts of rape can be classified into several motives including: (a) Seductive Rape; Rape that occurs because the perpetrator feels lust and is subjective. Usually this kind of rape because between the two already know each other, for example: rape by a boyfriend, rape by a family member and rape by a friend. (b) Sadistic Rape; sadistic rape. In this case the perpetrator gets sexual satisfaction not because of his body's relationship but the act of violence committed by the perpetrator against the victim. (c). Anger Rape; Rape is done as an expression of anger at the perpetrator. This kind of rape is usually accompanied by brutal acts of physical abuse. Sexual satisfaction is not the goal but to vent his anger. (d). Domination Rape; in this case the perpetrator wants to show his dominance over the victim. Physical violence is not the main objective of the victim because the main purpose is that the perpetrator wants to control the victim sexually so that the perpetrator can show that he is in control of the affected person, for example the rape of a maid by the employer.<sup>9</sup>

In general, the term abortion is defined as abortion, which is the release of the fetus prematurely, whether intentionally or not. This is usually done when the fetus is young (before the

<sup>7</sup> Tim Prima Pena, *Kamus Besar Bahasa Indonesia* (Gitamedia Press, t.t), p. 453

<sup>8</sup> Tim Prima Pena, *Kamus Besar Bahasa Indonesia*(t:t Gitamedia Press, t.t), p. 453

<sup>9</sup> Topo Santoso, *Seksualitas dan Pidana*, (Jakarta: In Hill, 1997), p. 92-93.



fourth month of pregnancy)<sup>10</sup>. Medically, abortion is the end or death of the pregnancy before the womb reaches the age of 20 weeks, ie before the fetus can live outside the womb independently<sup>11</sup>. The term abortion or linguistic abortion means miscarriage, abortion, or removing the fetus. In legal terms, it means spending conception from the uterus prematurely (before it can be born naturally).<sup>12</sup>

Abortion can be divided into two types: spontaneous abortion and abortion provocatus. Spontaneous (unintentional) abortion occurs when the mother experiences severe trauma due to chronic disease, reproductive tract abnormalities, or other pathological conditions. Abortion provocatus (intentionally) is an accidental abortion.<sup>13</sup>

Provocatus abortion consists of two types: artificialis therapicus abortion and criminalis provocatus abortion. Artificialis therapicus abortion is an abortion performed by a doctor on the basis of medical indications, namely apabia not taken abortion can endanger the mother's life. While criminalis provocatus abortion is an abortion performed to eliminate the fetus in the womb due to sexual relations outside marriage or terminate unwanted pregnancy.<sup>14</sup>

The Criminal Code (KUHP) is regulated in the second book of Chapter XIV concerning Moral Crimes, especially Article 299, Chapter XIX Article 346 to Article 349, and is classified as a crime against life. A description of the setting of abortion provocatus contained in each of these articles: Article 299; (1). Anyone who intentionally treats a woman or tells her to be treated, with the expectation or arising of hope that because the treatment can be aborted, her pregnancy is threatened with a maximum imprisonment of four years or a fine of at most forty five thousand rupiah. (2) If the guilty person does so in search of profit, or makes the act a search or habit, or if he is a physician, midwife or medicine, the penalty can be added by one third (3) If the guilty person commits the crime in carrying out a search, then the right to do the search can be revoked. Article 346; a woman who intentionally aborts or turns off her womb or tells someone else to do so is threatened with a maximum of four years in prison.

Article 347; (1) Anyone who deliberately aborts or turns off a woman without her consent is threatened with a maximum of twelve years in prison. (2) If the act results in the death of the woman, it is subject to a maximum imprisonment of fifteen years.

Article 348; (1) Anyone who deliberately aborts or turns off a woman with her consent is threatened with a maximum imprisonment of five years and six months. (2) If the act resulted in the death of the woman, she was sentenced to a maximum of seven years in prison.

<sup>10</sup> <http://www.lbh-apik.or.id/fact-32.htm>, assessed on September 16<sup>th</sup>, 2014

<sup>11</sup> Eny Kusmiran, S.Kp., M.Kes. *Op.cit.* p.49

<sup>12</sup> Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam*, 1<sup>st</sup> edition (Jakarta: PT. Ikhtisar Baru Van Hoeve, 1996), p. 7

<sup>13</sup> Eny Kusmiran, S.Kp., M.Kes. *Op.cit.* p.49.

<sup>14</sup> Abdul Aziz Dahlan. *Op.cit.*, p. 7



Article 349; If a physician, midwife or medicine agent helps to commit the crime Article 346, or conducts or assists in carrying out one of the crimes described in Article 347 and Article 348, the crime specified in that article can be added to one third and can be revoked the right to carry out the search in which crime is committed.

Decriminalization is a process of elimination of the nature of the availability of an act which was originally a criminal act and also the abolition of sanctions in the form of a crime<sup>15</sup>. The problem of decriminalization of acts must be in accordance with the criminal politics adopted by the Indonesian people, namely a number of actions which contradict or not contradict the fundamental values that prevail in society and are deemed appropriate or inappropriate for the community to carry out community welfare.

Government Regulation (PP) Number 61 of 2014 on Reproductive Health was passed by President Susilo Bambang Yudhoyono on July 21, 2014. This regulation is the implementation of Law No. 36 of 2009 on Health, especially Article 75, Article 126, and Article 127. The highlighted part is the legalization of abortion in the Government Regulation.

Article 31 Government Regulation No. 61 of 2014: (1). Abortion can only be done based on: (a). Indications of medical emergencies; or (b). Pregnancy due to rape; (2). The act of abortion due to rape as referred to in paragraph (1) letter b can only be carried out if the gestational age is at the latest 40 (forty) days counted from the first day of the last period.

Article 34 Government Regulation No. 61 of 2014: (1). Pregnancy due to rape as referred to in Article 31 Paragraph (1) letter b is a pregnancy resulting from sexual intercourse without the consent of the woman in accordance with the provisions of the legislation. (2). Pregnancy due to rape as referred to in Paragraph (1) is proven by; (a). gestational age in accordance with the incidence of rape, which is obtained by a doctor's certificate; and (b). information from investigators, psychologists, and / or other experts regarding alleged rape.

In Act No. 36 of 2009 on Health, there are regulations that allow a person to have an abortion with two conditions: an indication of medical emergencies and pregnancy due to rape that can cause psychological trauma for rape victims. The highlight of the decriminalization of abortion is Article 75 of Law No. 36 of 2009 on Health, that basically abortion is prohibited, but there are exceptions, one of which is if the pregnancy is due to rape which can cause psychological trauma for rape victims.

Article 75 of the Health Act states: (1). Everyone is prohibited from having an abortion. (2). Prohibition as referred to in Paragraph (1) can be excluded based on; (a) indications of medical emergencies detected at an early age of pregnancy, both those which threaten the life of the mother and/or fetus, who suffer from severe genetic diseases and /or congenital defects, or which cannot

<sup>15</sup> Mahrus Ali. *Dasar-Dasar Hukum Pidana*. Jakarta. Sinar Grafika. 2012. p. 245

be repaired, making it difficult for the baby to live outside the womb; or (b) pregnancy due to rape which can cause psychological trauma for rape victims. (2). The actions referred to in Paragraph 2 can only be made after going through pre-action counseling and/or counseling and end with post-action counseling conducted by competent and authorized counselors. (3). Further provisions regarding indications of medical emergencies and rape, as referred to in paragraph 2 and paragraph 3, are regulated by government regulations.

Article 194: Anyone who intentionally commits an abortion not in accordance with the provisions referred to in Article 75 Paragraph (2) shall be sentenced to a maximum of 10 years imprisonment and a maximum fine of Rp. 1 billion.

Based on the description of the Criminal Code, Law No. 36 of 2009 on Health and Government Regulation No. 16 of 2014 on Reproductive Health, if abortion is carried out on the indication of a medical emergency and pregnancy due to rape that causes psychological trauma, the perpetrators cannot be prosecuted. The difference in Article 341 and Article 342 of the Criminal Code is that the period of abortion is carried out, so that in the article if it is done it is not an abortion but a murder against the child.

The success of a criminal justice process is highly dependent on the evidence that has been uncovered or found. In the trial process, especially with regard to witnesses, many cases were not revealed due to the absence of Witnesses who could support the task of law enforcement (Roesli, Syafi'i, & Amalia, 2018). In fact, the existence of Witnesses and Victims is a very decisive element in the criminal justice process. The existence of Witnesses and Victims in the criminal justice process has not received the attention of the public and law enforcement. Unrevealed and unresolved cases were caused by witnesses and victims who were afraid to give testimony to law enforcement because they were threatened by certain parties.

To foster community participation to expose crime, a conducive climate needs to be created by providing legal protection and security to everyone who knows or finds something that can help reveal the crime that has occurred and report the matter to law enforcement. Witness must be given adequate legal and security protection for his report, so that he does not feel threatened or intimidated by both his rights and his soul. With the guarantee of legal protection and security, it is expected to create a condition that allows people no longer feel afraid to report a crime that they know to law enforcement, because of fear or fear of their lives threatened by certain parties.

Witness and Victim Protection in the criminal justice process in Indonesia has not been specifically regulated. Article 50 through Article 68 of Law Number 8 of 1981 on Criminal Procedure Law only regulates the protection of suspects or defendants to get protection from various possibilities of human rights violations. Therefore, it is time for the protection of the Witnesses and Victims to be regulated by a separate law.

Based on the principle of equality before the law, witnesses and victims in the criminal justice process must be guaranteed legal protection. In line with the principle of legal equality, guarantee of legal protection of Witnesses and Victims has been regulated in Law Number 13 of 2006 on Protection of Witnesses and Victims. Law Number 13 of 2006 stipulates that based on: (1). Article 7 paragraph (3) concerning the provision of compensation and restitution is regulated by Government Regulation; and (2). Article 34 paragraph (3) concerning the feasibility of providing assistance to witness and / or victim as well as the period and amount of fees regulated by the Government Regulation.

The regulation on the implementation of the two articles is regulated in a Government Regulation, namely the Government Regulation on the Granting of Compensation, Restitution and Assistance to Witnesses and Victims. In this Government Regulation, the arrangement regarding the granting of Compensation is done by submitting an application by the Victim, Family, or to the court through the LPSK. The court is a human rights court Because the right to Compensation is only in the case of severe human rights violations. LPSK in submitting a Compensation application along with its decisions and considerations is submitted to the human rights court to obtain a determination.

This provision applies also to requests for Compensation made after a heavy human rights court decision has obtained permanent legal force. If the LPSK is of the opinion that the examination of a request for Compensation needs to be carried out jointly with the principal case of gross human rights violations, the application is submitted to the Attorney General. Then the prosecutor of serious human rights violations in his claim included a Compensation application along with the decisions and considerations of the LPSK to obtain a human rights court decision.

Arrangements regarding Restitution granting are made by submitting an application by the Victim, Family or their attorney to the court through the LPSK. The meaning of the court is the district court that has the authority to examine, hear, and decide on the criminal offense concerned. In the event that a Restitution application is filed based on a court decision that has obtained permanent legal force and the offender is found guilty, the LPSK shall submit the application along with the decision and consideration to the district court to obtain a determination.

If the Restitution application is filed before the claim is read out, the LPSK submits the application along with the decision and consideration to the public prosecutor. The public prosecutor in his claim includes a request for Restitution and its decisions and considerations to obtain a court decision. In addition, this Government Regulation regulates the procedures for granting assistance to Witnesses and / or Victims. The assistance can be in the form of medical assistance and psycho-social rehabilitation assistance. Assistance is provided by submitting an application by the Victim, Family or their attorney to the LPSK to obtain a determination regarding

the feasibility, time period and amount of the costs required in providing assistance. The granting of assistance by LPSK is determined by the LPSK decision. The granting of such assistance is provided based on information from doctors, psychiatrists, psychologists, hospitals, and/or health/rehabilitation centers. The period of granting of such assistance by LPSK can be extended or terminated after hearing information from doctors, psychiatrists, or psychologists. Termination of the period of granting such assistance can also be done at the request of the victim.

### 3. CONCLUSION

Based on the description of the Criminal Code, Law No. 36 of 2009 on Health and Government Regulation No. 16 of 2014 on Reproductive Health, a woman who conducts an abortion is carried out on the indication of a medical emergency and pregnancy due to rape that causes psychological trauma, the abortionist cannot be prosecuted. The difference in Article 341 and Article 342 of the Criminal Code is that the period of abortion is carried out, thus, it is not an abortion but a murder against the child.

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