

THE RESPONSIBILITY OF MEDICAL PERSONNEL IN RELATION TO ABORTION MALPRACTICE

**Hamzanwadi, Adi Herisasono, Rafadi Khan Khayru, Solchan Ghozali, Fayola Issalillah,
Mirza Elmy Safira, Roidatus Shofiyah**

Correspondence: fayola.issalillah@gmail.com

Universitas Sunan Giri Surabaya

ABSTRACT

Abortion in Indonesia is a controversial issue that triggers heated social, moral and legal debates. Although Law No. 36/2009 on Health regulates abortion, illegal abortion practices are still rampant, endangering women's health. The existing regulations are ambiguous and do not fully accommodate the needs of women. This study uses descriptive analysis and literature review to examine legal issues related to abortion malpractice by medical personnel. The results show that regulation implementation is not optimal, access to safe abortion services is limited, and social stigma remains strong. Legal solutions to prevent illegal abortion include improving education and training for medical personnel, strengthening regulations and supervision, and increasing access to safe and legal reproductive health services. These efforts are expected to protect women's rights, enforce the law, and improve the quality of reproductive health services in Indonesia.

Keywords: abortion, regulation, law, reproductive health, malpractice, education.

INTRODUCTION

Abortion, the intentional termination of pregnancy, is a controversial issue that has sparked heated social, moral and legal debates in Indonesia. On the one hand, abortion is considered a woman's right to her body and a solution to unwanted situations, such as pregnancies resulting from rape or endangering the mother's health. On the other hand, abortion is contradicted by religious and moral values, and is considered a form of killing an innocent fetus. This debate is further complicated by the reality on the ground. In Indonesia, illegal abortion is rampant, driven by factors such as social stigma, barriers to accessing safe and legal health services, and lack of sexual and reproductive education (Nusawakan, 2019). Ironically, these illegal abortions often endanger women's health and even their lives. Most women want to be pregnant and take care of their babies (Issalillah, 2021). However, these abortions are the opposite of that, even though they are motivated by a variety of reasons.

Although Law No. 36/2009 on Health has regulated abortion, there are still many abortion practices performed illegally and malpractice by medical personnel. This raises legal issues related to legal protection and liability for medical personnel who commit abortion malpractice. From a legal perspective, abortion in Indonesia is regulated in several laws, such as the Criminal Code (KUHP) and the Health Act. The Criminal Code criminalizes abortion with the exception of medical emergencies that endanger the life of the mother (Utami & Mulyana, 2017). The Health Law expands the exception to allow abortion in cases of rape victims.

According to data from the Ministry of Health of the Republic of Indonesia, in 2022 there were approximately 2.4 million cases of abortion performed in Indonesia, most of which were performed illegally and not according to established medical procedures (Ministry of Health RI, 2022). This raises concerns about the health and safety implications for women who undergo abortions. Some are necessary but some are deliberate because they are unwanted (Kaseger et al., 2023). In addition, there are still many cases of abortion malpractice committed by medical personnel, either due to lack of knowledge, skills, or negligence in performing medical actions. However, the existing regulations are still considered ambiguous and have not fully accommodated the social realities and needs of women. This has caused confusion and concern for women seeking abortion, and hampered efforts to enforce laws that are fair and pro-women. In the midst of this complex debate, various parties continue to seek appropriate and dignified solutions. Civil society organizations and women activists are aggressively advocating for changes in abortion regulations that are more humane and gender-perspective. Public education and advocacy efforts are also ongoing to increase understanding of the abortion issue and encourage constructive dialogue.

An analysis of the legal issues related to the liability of medical personnel in abortion malpractice cases in Indonesia is a crucial step towards building a solid and comprehensive legal framework. This is important to protect women's rights, enforce the law, and improve the quality of reproductive health services. It is therefore necessary to review the regulations governing abortion and medical malpractice, including the Health Law, Criminal Code, and other relevant regulations. This review aims to identify legal gaps, regulatory ambiguities, and potential overlaps that may impede law enforcement and medical personnel accountability. A comprehensive understanding of the legal issues and factors contributing to abortion malpractice is an important foundation for formulating appropriate and sustainable solutions. This effort is expected to make a significant contribution to protecting women's health, enforcing the law, and improving the quality of reproductive health services in Indonesia.

METHODS

The method used in this study is descriptive analysis method. Descriptive analysis method is a method to explain events and phenomena that occur using data and facts

that actually occur accurately and clearly. This study also uses the literature study method, in which the author collects, reads, and analyzes various relevant reference sources, such as books, scientific journals, articles, laws and regulations, and other sources related to the research topic. These sources are used to obtain a comprehensive understanding of the legal protection and liability for abortion malpractice by medical personnel based on Law No. 36/2009 on Health.

RESULTS AND DISCUSSION

Legal regulations on abortion in Indonesia aim to protect women's rights and safeguard reproductive health. Understanding the consequences and negative impacts of illegal abortion may encourage women to seek safer and more responsible solutions. Law No. 36/2009 on Health has regulated abortion in Indonesia. In Article 75(1), the Health Law prohibits everyone from having an abortion. However, there are exceptions in Article 75 paragraph (2) that allow abortions to be performed under several conditions, such as:

- a. Pregnancy that endangers the life of the mother
- b. Pregnancy resulting from rape
- c. Severely deformed fetus

Although the Health Law has regulated abortion, there are still many abortion practices performed illegally and malpractice by medical personnel. This raises legal issues related to legal protection and liability for medical personnel who commit abortion malpractice. Medical personnel who perform legal abortions are protected by the Health Law. Article 76 of the Health Law states that health workers who perform abortions in accordance with the provisions in Article 75 paragraph (2) cannot be prosecuted. However, this legal protection does not apply to medical personnel who perform illegal abortions or malpractice. In this case, medical personnel can be charged with various articles in the Criminal Code, such as a woman who deliberately aborts or kills her pregnancy or orders someone else to do so, shall be punished by a maximum imprisonment of four years.

Article 347 of the Penal Code states that any person who with deliberate intent causes the abortion or death of a woman without her consent shall be punished by a maximum imprisonment of twelve years. If on account of said act the woman dies, he shall be punished by a maximum imprisonment of fifteen years.

Article 348 of the Criminal Code on abortion resulting in the death of the mother states that any person who with deliberate intent causes the death or abortion of a woman with the consent of the woman shall be sentenced to imprisonment for a term not exceeding five years and six months and if by reason of such act the woman dies, he shall be sentenced to imprisonment for a term not exceeding seven years.

Article 349 of the Criminal Code on abortion resulting in serious injury. If a doctor, midwife or druggist assists in the commission of the crime described in Article 346, or commits or assists in the commission of any of the crimes described in Articles 347 and 348, the punishment prescribed in said Articles may be increased by one third and may be deprived of the right to practice the profession in which the crime was committed. In addition, medical personnel who commit abortion malpractice may also be subject to ethical sanctions and professional discipline by the relevant professional organization, such as the Indonesian Medical Association (IDI).

Medical personnel who commit abortion malpractice may be held criminally, civilly, and ethically liable. Medical personnel can be convicted in accordance with the articles in the Criminal Code mentioned earlier. Medical personnel may be sued for compensation by the victim or the victim's heirs for losses suffered as a result of abortion malpractice. Medical personnel may be subject to ethical sanctions by the relevant professional organization, such as reprimands, written warnings, and revocation of practice permits.

Having an illegal abortion can result in criminal sanctions, both for the woman who terminates the pregnancy and those who assist in the abortion process (Cook & Dickens, 2016). Penalties vary depending on the circumstances, but can include imprisonment and fines. Several cases of abortion malpractice have occurred in Indonesia and led to lawsuits against medical personnel. Doctors and midwives charged with illegal abortion have been fined and sentenced to prison. This shows that legal issues related to illegal abortion and medical malpractice in Indonesia are complex and require attention.

Illegal abortion is still rampant in Indonesia despite clear regulations due to several factors. One of them is the suboptimal implementation of these regulations. Although there are laws and regulations governing abortion, their implementation is limited and ineffective. Many women find it difficult to access safe abortion services that comply with regulations due to the lack of facilities and infrastructure provided by the state. Social stigma also contributes to the prevalence of illegal abortion. Abortion is still considered a taboo and frowned upon by society. This leads many women to choose the risky and life-threatening illegal route because they are afraid of facing stigma and discrimination.

Limited access to information is also an obstacle to reducing the number of illegal abortions. Many women are unaware of their rights to legal and safe abortion. There are also gaps in the understanding and enforcement of abortion laws, especially in cases of rape. Addressing the prevalence of illegal abortion requires comprehensive efforts. The government needs to improve the implementation of existing regulations, including providing easier and safer access to abortion services that comply with regulations (Rini et al., 2023). It is also important to educate and socialize the public about women's rights to legal and safe abortion. Social support and a better understanding of the issue can help reduce stigma and discrimination against women who need abortion services.

Abortion malpractice prevention efforts are not only about protecting women's health, but also about ensuring that medical personnel work professionally, in accordance with applicable ethical and legal standards (Srihartini, 2020). This requires commitment and cooperation from various parties, including the government, professional organizations, academics, civil society activists, and the wider community. Increased education and training for medical personnel on legal abortion and abortion malpractice is a fundamental step. Medical personnel need to be equipped with adequate knowledge and skills to perform legal abortions safely and according to procedure. This can be done through ongoing training, workshops and seminars on the legal, ethical and medical aspects of abortion. Strengthening the regulation and supervision of the practice of abortion is equally important. Clear, firm, and comprehensive regulations are needed to regulate the practice of abortion, including strong monitoring mechanisms to ensure compliance with existing regulations (Rizal, 2015). These regulations need to consider various aspects, such as women's rights, reproductive health, moral and cultural values, and child protection.

Improving access to safe and legal reproductive health services is also key to preventing abortion malpractice. Women need to have easy and affordable access to legal abortion services performed by competent medical personnel in adequate health facilities. This can be done by expanding the reach of reproductive health services, improving the quality of health facilities, and establishing an effective referral system. Opening a space for open and constructive dialogue on the issue of abortion in society is an important step towards building a more comprehensive understanding of the issue. This dialog needs to involve various stakeholders, such as women, medical personnel, religious leaders, academics, civil society activists, and the wider community. This dialogue is expected to open a space to discuss various perspectives on abortion, so as to produce solutions that are more humane and dignified. By making comprehensive efforts to prevent abortion malpractice, we can protect women's health, ensure that medical personnel work professionally, and build safe and dignified reproductive health services in Indonesia. This is an important step towards realizing a healthy and prosperous society.

CONCLUSION

Legal issues related to illegal abortion and medical malpractice in Indonesia are complex and require serious attention from various parties. Efforts to prevent abortion malpractice need to be made to protect women's health and ensure that medical personnel work professionally. Abortion is a sensitive issue that involves various aspects, such as health, reproductive rights, morals, and law. Therefore, it is important to find a comprehensive and dignified solution by involving various stakeholders. Illegal abortion is not the right solution to solve the problem. It is important for women to seek legal and safe information and assistance regarding reproductive health and pregnancy.

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