



The Effectiveness of Law Enforcement on the Crime of Abortion Performed by Underages

Ni Nyoman Alit Meilinda Suasthi*, I Nyoman Putu Budiarta, I Nyoman Gede Sugiarta

Master of Law in Postgraduate Program, Warmadewa University, Denpasar, Indonesia

Email: alitmeilinda08@gmail.com

Abstract – Abortion by minors is prohibited by law, as stipulated in Law Number 35 of 2009 concerning Health under Article 75. Criminal liability for children typically involves punishment or laws that impose penalties equivalent to half of those for adult offenders. Non-criminal abortion is addressed in Article 75, Paragraph 2 of Law Number 35 of 2009 concerning Health, but it mandates counseling or guidance by the authorities before the procedure. In terms of law enforcement effectiveness regarding abortion committed by minors, it involves an investigative process where thorough investigation is conducted by authorities to ensure a fair trial and impose penalties or sanctions that serve as deterrents. The empirical method with an empirical juridical approach utilizing legal concepts and theories is employed in this study. Data for this research is obtained from various literature sources, including legislative regulations and relevant books corresponding to the research title. The study results indicate that while minors are subject to sanctions in compliance with laws and regulations, they are also entitled to government protection as they are deemed legally incompetent and under parental supervision.

Keywords: Abortion, Minors, Law Enforcement.

I. INTRODUCTION

In Indonesia, the existence of life is highly valued. Every day, every month, and every year the birth rate increases. Marriage is the cause of the increase in the birth of children. Children are a gift from God given to married couples who have entered into marriage and are worthy of being called parents (Kurniadi et al., 2022).

According to the provisions of Article 330 of the Civil Code, children are those who have not reached the age of 21 years and are not yet married (Emeralda, 2018). According to Article 47 paragraph (1) and Article 50 paragraph (1) of Law Number 1 of 1974 concerning Marriage, the limit for being called a child is having never been married (*Undang-Undang (UU) Nomor 1 Tahun 1974 Tentang Perkawinan, 1974*).

Abortions are common among underage individuals who engage in sexual activity without the bonds of marriage (Mahendra et al., 2022). The occurrence of such events is often due to various factors, including inadequate parental guidance and lack of comprehensive sexual education for minors (Edah et al., 2017). Lack of proper socialization in sexual education fails to provide minors with a comprehensive understanding of the realities and consequences associated with sexual behavior. The absence of proper education may not equip minors with the necessary knowledge to make informed decisions, which contributes to the occurrence of unplanned pregnancies and subsequent termination of pregnancies.

The implementation of sexual education is crucial, commencing from an early age, to impart comprehensive knowledge and awareness about sexual matters (Ratnasari, 2016). This imperative education should be efficiently provided both at home, by parents, and within educational institutions, by teachers. Parents and educators play pivotal roles in imparting age-appropriate information on sexual education, guiding minors in understanding the complexities of sexual relationships, and raising awareness about the potential risks and consequences of unplanned sexual encounters (Yafie, 2017).

Societal attitudes surrounding sexual education, parental roles, and the prevalence of misconceptions regarding discussing sexual matters with children significantly influence the occurrence of abortions among minors (Kartika et al., 2019). These societal perceptions often determine the extent and effectiveness of sexual education provided to minors, consequently impacting their ability to make informed decisions about their sexual health. Efforts to address these challenges and rectify misconceptions within society are critical in preventing unwanted pregnancies and reducing the occurrence of abortions among minors.

Judging from the juridical aspect, the notion of "child" in the eyes of Indonesian positive law is commonly interpreted as an immature person (*minderjarigheid/inferiority*) or often also referred to as a child under the supervision of a guardian (*minderjarige ondervoordij*). So, starting from the aforementioned aspects, it turns out that Indonesia's positive law (*ius constitutum/ius operatum*) does not regulate the existence of a standard unification law that applies universally to determine the age limit criteria for a child.

So far, parents do not understand how sexual education in children and its application. Many parents consider sex to be taboo, so they avoid talking about sexual problems with their children. They also think that sex education is inappropriate for children. They only understand that sexual education is related to the way a person has sex. Parents assume that giving this understanding to children will make children have a sense of curiosity about sex which allows deviations to occur (Darmiany et al., 2020). Many studies have been conducted by experts on how to teach sex education to children. Socialization activities about sexual education are also often carried out either on talk shows about parenting or devotional events like this by experts.

Abortion, or *abortus provocatus*, known in Indonesia as intentional termination, originates from the Latin term "abortion" (Lohy, 2016). It encompasses various forms of premature pregnancy termination or miscarriage. Defined as the deliberate expulsion of pregnancy products from the uterus, abortion involves intentional interference, whether through mechanical methods, medication, or other means. Depriving a fetus of life is deemed a criminal offense, akin to premeditated murder, manslaughter, or persecution leading to another's death (Sinaga, 2023).

The 2009 Health Law No. 36 is generally aligned with applicable criminal laws, prohibiting all forms of abortion while emphasizing the state's responsibility to protect its citizens (*Undang-Undang (UU) Nomor 36 Tahun 2009 Tentang Kesehatan, 2009*). Exceptions are made for medically necessary abortions and pregnancies resulting from rape, providing legal justifications for these cases. The new health law, beyond addressing medically warranted abortions, also includes provisions concerning pregnancies resulting from rape, an aspect previously unregulated by the criminal code. From this context, the following problem formulation emerged;

1. What sanctions are imposed on minors who commit abortion under coercive circumstances?
2. How effective is the enforcement of laws against minors involved in abortion crimes?

II. METHOD

This research constitutes an empirical study focusing on field data as its primary source, particularly involving interviews. The research falls within the realm of empirical legal research or sociological legal research, categorized as non-doctrinal law. It examines legal issues by delving into applicable legal provisions and real-world societal occurrences. The empirical approach employed aims to establish a framework of evidence or verification to ascertain truth. This methodology is anticipated to unearth extensive data and information regarding law enforcement concerning minors involved in abortion-related crimes.

Specifically, this research centers on empirical legal research (juridical). The study relies on primary data sources, secondary data sources, including primary legal materials, secondary legal materials, and tertiary legal materials. Primary data sources comprise information obtained through interviews conducted with judges handling cases related to minors committing abortion crimes. Secondary data sources encompass supporting information derived indirectly that reinforce primary data sources, such as relevant laws,

books, articles, journals, research findings, and other pertinent materials. Tertiary legal materials, including dictionaries, encyclopedias, and additional resources pertinent to this research, are also considered.

The employed data collection technique involves conducting face-to-face interviews with involved parties, notably within the Denpasar District Court premises. For analysis, the researcher employs an empirical juridical approach and conducts a descriptive qualitative analysis. This entails collecting, selecting, and organizing primary and secondary data, subsequently analyzing it through the lens of pre-existing theories, and drawing descriptive qualitative conclusions.

III. RESULT AND DISCUSSION

1. Imposition of Criminal Sanctions Against Underage Children Who Commit the Crime of Abortion in Forced Circumstances

Arrangements pertaining to abortion are stipulated in various legal provisions, including Article 77A Paragraph 1 Jo Article 45A of Law Number 35 of 2014 concerning Amendments to Laws, Number 23 of 2002 concerning Child Protection Jo Article 55 Paragraph 1 1 of the Criminal Code, Law Number 11 of 2012 regarding the Juvenile Criminal Justice System, Law Number 8 of 1981 regarding the Criminal Procedure Code, alongside other relevant statutes and regulations.

The procedures for handling criminal cases involving children differ significantly from those involving adults. The treatment of criminal cases concerning minors is governed by separate regulations specifically addressing this matter. Various provisions outline the approach toward children in conflict with the law, including Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 3 of 1997 concerning Juvenile Justice.

In the case of a crime committed by a child before the age of 18, he will be brought to court after the child has exceeded the age limit of 18 but has not yet reached the age of 21, then he will still be brought to trial in accordance with Article 20 of Law Number 11 2012 concerning the Juvenile Criminal Justice System.

Based on Law Number 3 of 1997, it can be said that the treatment of children who commit criminal acts has provisions, every child has the right not to be separated from his parents, unless there are valid legal reasons and regulations indicating that separation is in the best interests of the child (*Undang-Undang (UU) Nomor 3 Tahun 1997 Tentang Pengadilan Anak, 1997*).

Children are seen as legal subjects. The positioning of children as legal subjects was born from the socialization process of various values into substantial legal events which include legal events and legal relations that have a stake in the scope of civil law and public law, especially criminal law (Jundi, 2023). The legal of a human being as bearer of rights, starting from the moment he is born and ends when he dies, even a child who is still in the womb of his mother can be considered as the bearer of rights (considered to have been born) (Rahayu, 2013).

In the crime of abortion committed by minors, the child as a legal subject or the perpetrator of the crime is responsible for his actions in accordance with applicable regulations, his responsibility cannot be separated from the judge's considerations in giving his decision (Arimbi, 2020). The judge's consideration is as a process in imposing a decision by confirming/annulling legal facts and events, based on formal and material law supported by rational arguments and the judge's conviction so that it becomes a strong reason in his dictum.

The imposition of sanctions aims to protect the interests of the child, so the threat of deprivation of liberty is avoided as far as possible (Yanti, 2020). As emphasized in various international instruments that no one will be deprived of the child's freedom illegally or arbitrarily against the rights of the child. Punishment for a child must be appropriate and applied as a last resort for the education of a child not to commit a crime (Ar, 2021).

Children are usually given punishment, which is ½ (half) of the sentence imposed on adult criminals. However, the current penal system in Indonesia only relies on the nature of

the punishment without regard to how the child's behavior can change for the better in the future. In this case, a punishment system is needed, namely one that is educational in nature, a punishment system that focuses more on actions that can educate and foster so that a child who has committed a wrong act can be given the opportunity to change his behavior which was previously deviant to be better in the future and will not repeating his actions.

According to Saleh in Saputra (2010), criminal responsibility is something that is criminally accountable to someone who commits a criminal act or a criminal act which is interpreted as an objective reproach that exists in a criminal act and subjectively fulfills the requirements to be punished for that action.

Positive sanctions are elements that encourage compliance or behavior that is in accordance with the rules. Conversely, negative sanctions impose suffering or misery on violators of group rules. then the process of imposing sanctions includes a system of reward and suffering, the result of which is an effective support for complying with the rules. In essence, a sanction aims to restore the balance of the social order that has been disrupted by violations of the rules to its original state. That the rule of law, including the sanctions, cannot operate by itself. Three children who commit criminal acts can be prosecuted by law and appropriate measures.

In the criminal act of abortion there is also interference from other people or also called participation. Participation or participation in criminal law is questionable because based on the fact, often an offense is committed jointly by several people. The word *deelneming* comes from the word *deelnemen* (Dutch) which is translated as "accompanying" and *deelneming* is defined as "inclusion." The people who are involved in the cooperation that creates a crime, the actions of each of them are different from one another, so may not be the same in their mental attitude towards the crime and towards other participants. But from the differences that exist in each of them, a relationship is established in such a close way, where the actions of one support the actions of the other. all of which lead to one is the realization of a crime. Due to the different actions of each of the participants involved, of course the role or contribution that arises from each person is also different.

2. The Effectiveness of Law Enforcement Against the Crime of Abortion Committed by Underage Children

The ethical considerations concerning minors involved in cases of abortion require careful attention and prioritization of their welfare and rights. It is crucial to handle these cases with utmost sensitivity, ensuring the well-being of the minors throughout the process. The investigation and prosecution stages, although detailed, lack clarity in presenting these processes.

The investigation commences with the police initiating the process, followed by the return of the case dossier to the investigator. The investigator then diligently follows the prosecutor's instructions to complete the case dossier, ensuring it meets the standards set by the public prosecutor (P-21). The subsequent phase involves the delegation of the case, after which the investigators submit files, evidence, and suspects to the public prosecutor. The investigation is a vital process, not solely reliant on document completion but also grounded in scientific principles, which are applied through scientific investigation methods.

In cases involving children accused of abortion, the investigation stage is conducted by investigators specializing in the women and children protection unit, in adherence to Article 1 paragraph (8) of the Juvenile Justice System (*Sistem Peradilan Pidana Anak/SPPA*) Law, designating them as child investigators. Before initiating an investigation, the child investigator seeks a recommendation from the correctional center (*balai pemasyarakatan/bapas*) to ascertain if diversion is appropriate for the child involved in the law. Following a recommendation from correctional center (*balai pemasyarakatan/bapas*), parties are gathered at the women's and children's unit for diversion. The social research outcomes from correctional center (*balai pemasyarakatan/bapas*) must be submitted to investigators within 3 x 24 hours as mandated by Article 28 of Law Number 11 of 2012, concerning the Juvenile Criminal Justice System.

The prosecution process mirrors the investigative stage, with the prosecutor convening diversionary discussions without waiting for correctional center' (*balai pemasyarakatan/bapas*) litmas outcomes. Challenges often arise due to difficulties in reaching agreements between parties. Successful diversion results in case suspension, pending court approval, overseen by certified prosecutors with the authority to handle child cases.

Law enforcers prioritize diversion for children involved in criminal acts to alleviate the pressure they face, aiming for rehabilitation and community engagement (Hambali, 2019). Failing diversion results in the child undergoing the judicial process according to the law.

During court proceedings, judges allow both the child and their guardian to express opinions before sentencing, ensuring confidentiality to avoid social disparities post-case resolution.

Handling abortion cases, particularly by the police, encounters significant challenges, hindering quick resolution. Despite these difficulties, law enforcement strives to resolve cases effectively, avoiding further trauma to the minors involved. Psychological support and guidance are provided to prevent reoccurrence, considering the legal subjectivity of minors in determining appropriate sanctions (Ahmad et al., 2020).

Mrs. Putu Ayu Sudariasih, a judge at the Denpasar District Court, underscores the importance of holding defendants accountable for their actions, emphasizing that there are no justifications or excuses for the committed crimes. Forgiveness, in this context, relates to the cessation of punishment. Detention periods are commensurate with committed actions, ensuring proper justice.

IV. CONCLUSION

The discussion outlined above yields significant conclusions;

Criminal sanctions against minors engaged in abortion offenses are governed by specific legal arrangements as stipulated in Article 77A Paragraph 1, Article 45A of Law Number 35 of 2014 Amending Laws Number 23 of 2002 on Child Protection, along with Article 55 Paragraph 1 of the Criminal Code, Law Number 11 of 2012 on the Juvenile Criminal Justice System, and Law Number 8 of 1981 on Criminal Procedure Code. Alongside facing sanctions under these laws, minors receive governmental protection as they are legally considered incompetent and under parental supervision. Notably, minors facing charges related to abortion are subjected to sanctions equivalent to $\frac{1}{2}$ or less than what adults would receive for the same offense.

The effectiveness of law enforcement concerning minors engaged in abortion crimes is aligned with prevailing regulations. The investigative stage, as per Article 1 Paragraph 8 of Law Number 11 of 2012 on the Juvenile Criminal Justice System, mandates a recommendation from Bali Correctional Center (*balai pemasyarakatan/bapas*) before initiating an investigation involving minors. Following the recommendation from correctional center (*balai pemasyarakatan/bapas*), further investigation procedures are conducted regarding minors involved in abortion cases. Subsequently, the prosecution process, lasting approximately 1 to 3 months post-complete dossier, ensues. During trial proceedings, the judge determines appropriate sanctions for the minor based on their actions and demeanor while maintaining the confidentiality of the minor's identity.

The discussion above prompts several suggestions;

1. For practitioners. Enhanced attention from law enforcement and governmental bodies is essential to prevent minors from engaging in promiscuity, coupled with increased socialization efforts highlighting the risks associated with abortion.
2. For academics. This research should contribute to the development of abortion-related criminal law and serve as a foundation for subsequent academic investigations, fostering advancements in this domain.
3. For the public. Society must ensure the protection of rights for minors involved in criminal abortion cases. The legal implications severely impact the health and mental well-being of these minors, warranting additional post-sentencing safeguarding measures within the community to aid their rehabilitation.

REFERENCES

- Ahmad, H., Hartati, A., & Maharani, J. F. (2020). Pengaruh Dukungan Psikologis Awal pada Remaja dalam Pencegahan Covid-19 pada Siswa Madrasah Aliyah Al Badriyah. *Jurnal Realita*, 5(2), 1091–1106.
- Ar, Mhd. F. I. (2021). *Pertanggungjawaban Pidana Turut Serta Membantu Melakukan Penganiayaan yang Dilakukan Anak yang Menyebabkan Kematian (Analisis Putusan No. 3/PID. SUS-Anak/2020/PT. YYK)* [Skripsi]. Universitas Muhammadiyah Sumatra Utara.
- Arimbi, Y. (2020). *Pertanggungjawaban Pidana terhadap Anak sebagai Pelaku Aborsi (Studi Putusan No. 5/Pid. Sus. Anak)/2018/PN. Mbn* [Skripsi]. Universitas Muhammadiyah Sumatra Utara.
- Darmiany, Nisa, K., Nurhasanah, Tahir, M., & Asrin. (2020). Sosialisasi Pelaksanaan Pendidikan Seksual pada Anak kepada Orang Tua dan Guru SDN Gugus IV Kota Mataram. *Jurnal Pendidikan Dan Pengabdian Masyarakat*, 3(4), 279–283.
- Edah, A., Yauri, I., & Mampuk, V. (2017). *Eksplorasi Persepsi Remaja terhadap Seks Pranikah di Universitas Katolik De La Salle Manado* [Skripsi]. Universitas Katolik De La Salle Manado.
- Emeralda, N. R. (2018). *Pemenuhan Hak Memperoleh Pendidikan Formal bagi Anak (Studi di Lembaga Pembinaan Khusus Anak Kelas II Bandung)* [Skripsi]. Universitas Brawijaya.
- Hambali, A. R. (2019). Penerapan Diversi terhadap Anak yang Berhadapan dengan Hukum dalam Sistem Peradilan Pidana. *Jurnal Ilmiah Kebijakan Hukum*, 13(1), 15–29. <https://doi.org/10.30641/kebijakan.2019.V13.15-30>
- Undang-undang (UU) Nomor 1 Tahun 1974 tentang Perkawinan, Pub. L. No. 1, Pemerintah Pusat (1974).
- Undang-undang (UU) Nomor 3 Tahun 1997 tentang Pengadilan Anak, Pub. L. No. 3, Pemerintah Pusat (1997).
- Undang-undang (UU) Nomor 36 Tahun 2009 tentang Kesehatan, Pub. L. No. 36, Pemerintah Pusat (2009).
- Jundi, M. F. Al. (2023). *Penegakan Hukum terhadap Pelaku Tindak Pidana Kekerasan Fisik pada Anak di Wilayah Polda Jawa Barat Dihubungkan dengan pasal 76C Undang-undang No. 35 Tahun 2014 tentang Perlindungan Anak* [Skripsi]. Universitas Islam Negeri Sunan Gunung Djati Bandung.
- Kartika, C. S. D., Kadir, A., Yudhiarti, N. P., Istiqamah, S. N., Shafira, F., & Purwandari, E. (2019). Keterlibatan Orang Tua dalam Pendidikan Seksualitas Anak. *Jurnal Publikasi Pendidikan*, 9(2), 162–169.
- Kurniadi, B. B., Fajariyanto, T. C., & Ginting, Y. A. B. (2022). Nilai-nilai Keagamaan Katolik dalam Pembentukan Moral Anak di Paroki Santo Yosef Delitua. *Titian: Jurnal Ilmu Humaniora*, 6(2), 145–156.
- Lohy, S. N. D. (2016). *Tinjauan Yuridis Pengaturan Legalisasi Aborsi bagi Korban Tindak Pidana Pemerkosaan Dikaitkan dengan Pembuktian di Pengadilan Berdasarkan Hukum Positif Indonesia* [Skripsi]. Universitas Kristen Maranatha.
- Mahendra, Y. I., Ginting, M., & Mauliza, F. (2022). Aborsi di Kalangan Remaja. *Sanksi: Seminar Nasional Hukum, Sosial Dan Ekonomi*.
- Rahayu, N. F. (2013). *Perlindungan Hukum bagi Anak Terlantar untun Memperoleh Akta Kelahiran Dihubungkan dengan Pasal 27 Ayat (1) dan (2) Undang-undang Nomor 23 Tahun 2002 tentang Perlindungan Anak* [Skripsi]. Universitas Islam Negeri Sunan Kalijaga.
- Ratnasari, R. F. (2016). Pentingnya Pendidikan Seks untuk Anak Usia Dini. *Jurnal Tarbawi Khatulistiwa*, 2(2), 55–59.
- Saputra, R. (2010). *Pertanggungjawaban Pidana terhadap Pelaku Perbuatan Tidak Menyenangkan (Studi Putusan Perkara No. 49/Pid. B/2009/PN. GS)* [Skripsi]. Universitas Lampung.
- Sinaga, A. S. G. (2023). Perspektif Etika Kristen terhadap Tindak Aborsi. *Pengaruh: Jurnal Teologi Kristen*, 5(1), 28–37. <https://doi.org/10.36270/pengaruh.v5i1.138>
- Yafie, E. (2017). Peran Orang Tua dalam Memberikan Pendidikan Seksual Anak Usia Dini. *Jurnal Care (Children Advisory Research and Education)*, 4(2), 18–30.
- Yanti, T. (2020). *Pertanggungjawabab Hukum atas Tindak Pidana Aborsi yang Dilakukan oleh Anak di Bawah Umur* [Skripsi (Diploma)]. Universitas Islam Kalimantan.