

Formulation Policy on Health for Abortion Actions on Disabilities Based on the Value of Legal Certainty

Budi Santoso, Dey Ravena, and Tono Hadi Susiarno

ABSTRACT

This study aims to identify the policy formulation in Law No. 36 of 2009 on Health regarding abortion for fetal defects and the necessary formulation of the law to achieve legal certainty. The research method used was a literature review by analyzing legal documents and relevant literature on the issue. The analysis showed that Law No. 36 of 2009 on Health limits abortion for fetal defects to be performed only before the pregnancy reaches 6 weeks, while fetal defects usually can only be detected after 16 weeks. This causes legal uncertainty for doctors and patients. Therefore, policy formulation is needed that considers medical and moral factors to achieve legal certainty in the practice of abortion for fetal defects.

Keywords: Abortion, Congenital Defect, Ultrasound.

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B. Santoso *

Faculty of Law, Islamic University of Bandung, West Java, Indonesia

(e-mail: drsantoso@yahoo.com)

D. Ravena

Faculty of Law, Islamic University of Bandung, West Java, Indonesia

(e-mail: deyravena86@gmail.com)

T. H. Susiarno

Faculty of Law, Islamic University of Bandung, West Java, Indonesia

(e-mail: drhadisusiarno@yahoo.com)

**Corresponding Author*

I. INTRODUCTION

Health is the most important aspect related to the development of community life and plays a crucial role in shaping a fair, prosperous, and prosperous society (Maskawati & Iswanti, 2018). Health is a human right and one of the components of general welfare that must be realized in accordance with the ideals of the Indonesian nation as stated in the Preamble to the 1945 Constitution (Astuti, 2009). This assertion aims to ensure that health services have maximum rules so that everyone can receive health services without exception, as this concerns human rights (Muntaha, 2017).

Law is one of the means to regulate, organize, and resolve various problems in society (Praja, 2011). Therefore, the actions taken by the community can be determined whether they violate the law or not (Ravena & Kristian, 2017). In relation to its duty as a protector of the interests of society, the law contains commands and/or prohibitions that must be obeyed. The law is regulatory and compelling to comply with regulations and provides strict sanctions. Law as a social norm is inseparable from the values of society, even the law is a reflection and concretization of the values that exist in society (Syaukani & Thohari, 2011). This means that the law will always follow the effective value system in regulating life.

Life is a gift from Allah SWT that should be highly valued by everyone. The life given to every human being is a human right that can only be taken by the Almighty. When talking about abortion, we are talking about the survival of human children. There are many debates about the moral, ethical, and legal issues surrounding abortion. Opponents of abortion often argue that the embryo or fetus is a human with the right to life, while supporters of abortion legality argue that women have the right to make decisions about their own bodies (Farhana, 2022; Mahowald, 1982).

The existing statistical data has proven it. WHO estimates that around 56 million abortions are performed every year in the world, and almost half of them are done unsafely (unsafe abortion) (Organization, 2012). It is estimated that every year there are 20 million unsafe abortions in the world, 26% of which are legal, and more than 70,000 cases of unsafe abortions in developing countries result in maternal death (Geleto & Markos, 2015).

Medical technology has developed rapidly, especially in early detection of fetal congenital abnormalities (Fajrin *et al.*, 2022). A series of tests and examinations can be performed in early fetal age. One way to detect fetal defects is by performing ultrasound tests (USG). Pregnancy examination has long been conducted using ultrasound devices. USG is an examination tool that uses ultrasound (sound waves) emitted by transducers.

Technological advances have made USG as a pregnancy examination tool increasingly advanced. In all cases of severe genetic diseases and/or congenital defects, they can be detected from the second trimester of pregnancy (>14 weeks) (Solution, 2016).

Abortion under criminal law is a crime committed by an act that results in premature birth. In the case of criminal acts against abortion, it is also interpreted as premeditated murder of a child, where in abortion, there must be a living fetus (vrucht) or baby (kidn) that is then killed.

In the provisions of Article 75 paragraph (1) of Law Number 36 of 2009 concerning Health, it is explicitly prohibited to perform abortion, which states that everyone is prohibited from performing abortion. However, there are exceptions for two things, as stipulated in Article 75 paragraph (2) of the Health Law which states:

"The prohibition referred to in paragraph (1) can be exempted based on: indications of medical emergencies detected since early pregnancy, both those that threaten the lives of the mother and/or fetus, who suffer from severe genetic diseases and/or congenital defects, or which cannot be repaired so that it is difficult for the baby to survive outside the womb; or pregnancy resulting from rape that can cause psychological trauma for the rape victim".

From a medical perspective, there is no definite limit to when a pregnancy can be terminated. A pregnant woman's pregnancy can be terminated at any time as long as there is a medical emergency indication to terminate the pregnancy.

In the Qur'an and Hadith, there is no law on abortion, but there is a prohibition against killing a person's soul without right, as Allah says: "And whoever kills a believer intentionally, his recompense is Hell wherein he will abide eternally, and Allah has become angry with him and has cursed him and has prepared for him a great punishment." (Anwar, 2017).

There is an interesting fact about abortion that can be concluded that it can be legally allowed if it is done for medical reasons and doctors have the right to consider performing abortions in such situations. However, in the case of Article 76 letter a, Law No. 36 of 2009 concerning health states that abortion can only be performed before the pregnancy is 6 weeks old, calculated from the first day of the last menstrual period. This formulation is difficult to apply in practice because congenital defects can only be detected after 16 weeks based on obstetric and gynecological science. This is what prompted the author to research this issue.

From the background above, the following problem identification can be drawn:

1. What is the policy formulation in Law No. 36 of 2009 concerning health regarding abortion for congenital defects?
2. How should the formulation of Law No. 36 of 2009 concerning health regarding abortion for congenital defects be to realize the value of legal certainty?

II. RESEARCH METHOD

This research employs normative legal research or juridical normative method, which can be used to answer how the formulation of Law No. 36 of 2009 on Health should be regarding abortion for congenital defects to achieve legal certainty values. This research will analyze legal regulations and court decisions related to abortion for congenital defects. This research will also involve a literature review of relevant legal theories. The results of the study will provide recommendations on how the formulation of the Law should be to meet the value of legal certainty in the case of abortion for congenital defects.

III. RESULTS AND DISCUSSION

A. Policy Formulation in Law No. 36 of 2009 on Health Regarding Abortion for Genetic Defects

Law No. 36 of 2009 on Health is one of the policy formulations produced by the Indonesian government to regulate public health. This law contains provisions regarding abortion for genetic defects, which are regulated in Article 75 and Article 76 letter a.

Article 75 states that abortion can only be carried out if it is done to save the mother's life or if the pregnancy is the result of sexual violence or rape. Meanwhile, Article 76 letter a adds a time limit for performing abortions, which can only be done before the pregnancy is 6 weeks old, calculated from the first day of the last menstruation.

However, in practice, detection of genetic defects in fetuses can only be done after 16 weeks of pregnancy. This means that the provisions in Article 76 letter a cannot be applied to abortions for genetic defects.

The discrepancy between legal provisions and medical practice indicates the need to update regulations related to abortion for genetic defects. One effort that can be made is to revise Article 76 letter a in Law No. 36 of 2009 on Health, so that it can consider medical needs and women's reproductive health rights.

In revising Article 76 letter a, in-depth discussions and studies involving obstetric and gynecological experts, human rights, medical ethics, and related community groups need to be conducted. The results of these studies and discussions can serve as a basis for drafting more appropriate regulations that meet medical needs and women's reproductive health rights.

In addition, other efforts that can be made are to increase women's access to information and reproductive health services, including early detection of genetic defects in fetuses. Thus, women will be better able to make informed decisions about their pregnancies, including abortion for genetic defects.

In conclusion, the Policy Formulation in Law No. 36 of 2009 on Health has not fully accommodated the medical needs and reproductive health rights of women regarding abortion for genetic defects. Therefore, efforts are needed to revise regulations that are more suitable for medical conditions and developments, as well as the human rights needs of women.

B. Policy Formulation that Should be Applied in the 2009 Health Law Regarding Abortion for Fetuses with Birth Defects to Realize Legal Certainty

It is important to understand that the provision in the 2009 Health Law that regulates abortion for fetuses with birth defects is still a debate and controversy in society. Some argue that abortion for birth defects should be allowed if the mother's life is in danger, while others oppose it because it is considered as an act of murder against a living fetus.

Therefore, the policy formulation that should be taken to realize legal certainty in the 2009 Health Law regarding abortion for fetuses with birth defects is by upholding the principles of balanced human rights and reproductive health.

- a. Firstly, the policy formulation should consider human rights, including the right to life, health, and autonomy for women in making decisions about their own bodies. This policy formulation must acknowledge that abortion for birth defects can be done if the life of the pregnant woman is at risk and there is no other way to save it, so the right to life and health of the mother must be prioritized.
- b. Secondly, the policy formulation should consider reproductive health, which is the right of every individual to decide when and how many children they will have. In this case, the policy formulation must ensure that abortion for birth defects is only done after accurate diagnosis and within the time limits set by the law. The policy formulation must also consider protecting women's autonomy in making decisions about their own bodies.
- c. Thirdly, the policy formulation should consider improving access to information and education on reproductive health for the public, especially women. In this case, the government must provide easy and open access for the public to obtain accurate and trustworthy information and reproductive health services, including information about the choice of abortion for birth defects.
- d. Fourthly, the policy formulation should strengthen regulations and oversight of illegal and unsafe abortion practices to prevent dangerous practices that threaten the health and lives of pregnant women.

In order to realize legal certainty, the policy formulation taken must be based on clear and firm regulations. Therefore, the policy formulation that should be taken is to provide space for abortion for fetuses with birth defects after 6 weeks of pregnancy with clear conditions and procedures. This will provide legal certainty and protection for the human rights of patients while also considering principles of health and justice. Furthermore, the government must ensure that this policy can be implemented properly and does not violate applicable ethical and legal norms.

IV. CONCLUSION

Based on the problem identification, it can be concluded that Law No. 36 of 2009 concerning Health has a policy formulation regarding abortion for congenital defects that is still unclear and invites pros and cons. Article 76 letter a of the Law limits abortion can only be done before the pregnancy is 6 weeks old, but congenital defect detection is usually only possible after 16 weeks of pregnancy, so this formulation is not practical in the field.

The Law should consider special cases and provide space for doctors to perform abortion in certain cases that are considered necessary, such as when there are congenital defects that can endanger the lives of the mother or fetus. In this case, the Law should provide clear guidelines on the requirements and conditions that must be met to perform abortion in these specific cases. It is hoped that this will create legal certainty and more fair policies that consider the health and safety of both the mother and fetus.

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CONFLICT OF INTEREST

Authors declare that they do not have any conflict of interest.

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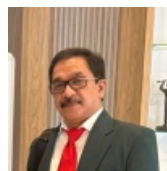
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Budi Santoso is an obstetrician and gynecologist specialist, born in Sampit on June 15, 1972. He is active in various activities outside of his profession, including IDI, ARSSI, MHKI, MAKERSI Jabar, as well as actively involved in hospital accreditation surveys with the Indonesian Health Facility Accreditation Agency. During his education, he excelled and achieved several accomplishments, including receiving the Tajuludin Award as the best obstetrics and gynecology student at FK Unpad. Even after graduating, he continued to pursue education in law and is currently a doctoral student in law.



Dey Ravena, born in Bandung on March 11, 1959, completed his primary and secondary education in Bandung before continuing his undergraduate studies at Universitas Islam Bandung. He then pursued a Master of Law degree at Universitas Diponegoro Semarang and completed a Doctoral Program in Law (S3) at the same university in 2007 with the highest honor of Cum Laude. Two years later in 2009, he achieved the highest academic rank of Professor in Criminal Law



Tono Hadi Susiarno is a Obstetrics and Gynecology specialist, who graduated from the Faculty of Medicine at UNPAD in 1990, completed his Obstetrics and Gynecology specialization in 2000, pursued a Master of Health at FKUP in 2005, then continued with a Master of Health Law at UNIKA Semarang, graduating in 2007. He completed his education as a consultant at RSHS/FKUP in 2006, and earned his Doctorate in Law at the Islamic University of Bandung in 2012.