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Morality behind Prohibition of Abortion and The Meaning of Medical Emergency As a Legal Basis for Abortion

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Abstract: Morality behind prohibition of abortion remains one of the most controversial issues in modern society. Proponents of abortion rights emphasize the importance of women's rights to their own bodies and the freedom for women to make decisions regarding reproductive rights. Opponents of abortion argue that the life of the fetus must be protected even during pregnancy. The party in the middle position in this debate tries to balance these two interests, namely a woman's autonomy over her body and the right to life of the fetus, so that a legal instrument is needed to limit the cases in which abortion can be legally carried out. This research aims to uncover questions about the morality of abortion in the Indonesian legal system and the meaning of medical emergencies as a basis for the legality of abortion. Abortion in Indonesia's legal system emphasizes the right to life of the fetus as a potential baby and does not fully consider social dynamics and women's autonomy over their bodies and reproduction. Medical emergencies are regulated in the 2014 Government regulations, where new implementing regulations should be issued to accommodate the provisions of the New Criminal Code and the Health Law as well as developing social dynamics.

Keywords: *Morality, Abortion, Medical Emergency, Women's Autonomy.*

Abstrak: Moralitas dibalik larangan aborsi tetap menjadi salah satu isu perdebatan paling kontroversial dalam kehidupan masyarakat modern. Para pendukung hak aborsi menekankan pada pentingnya hak perempuan atas tubuh mereka sendiri serta kebebasan bagi perempuan untuk membuat keputusan atas hak reproduksi. Penentang aborsi berpendapat bahwa kehidupan janin harus dilindungi bahkan sejak masa kehamilan. Pihak yang berada di posisi tengah dalam perdebatan ini mencoba untuk menyeimbangkan kedua kepentingan tersebut, yakni otonomi perempuan atas tubuhnya serta hak hidup janin sehingga diperlukan instrument hukum untuk membatasi dalam hal apa aborsi dapat secara legal dilakukan. Penelitian ini bertujuan untuk mengungkap pertanyaan tentang moralitas aborsi dalam tata hukum Indonesia dan arti kedaruratan medis sebagai dasar legalitas aborsi. Aborsi dalam tata hukum Indonesia menitikberatkan sisi hak hidup janin sebagai calon bayi dan belum sepenuhnya mempertimbangkan dinamika sosial dan otonomi Perempuan atas tubuh dan reproduksinya. Kedaruratan medis diatur dalam peraturan Pemerintah tahun 2014 dimana sudah seharusnya lahir aturan pelaksana baru untuk mengakomodir ketentuan KUHP Baru dan UU Kesehatan serta dinamika sosial yang berkembang.

Keywords: *Moralitas, Aborsi, Kedaruratan Medis. Otonomi Perempuan.*

INTRODUCTION

The morality behind prohibition of abortion remains one of the most controversial issues in modern society. This debate involves complex considerations regarding individual rights, namely a woman's right to bodily autonomy and the right to life of the fetus or future baby. Proponents of abortion rights emphasize the importance of women's rights to their own bodies and the freedom for women to make reproductive decisions. On the other hand, opponents of abortion argue that the life of

the fetus must be protected even during pregnancy. Those who are pro-abortion argue that women have the full right to make decisions about their own bodies, including whether to continue or terminate a pregnancy. Judith Jarvis Thomson's (1971) philosophy is often cited in this context, describing unwanted pregnancy as a violation of one's bodily integrity. Rosalind Hursthouse, in her essay "Virtue Theory and Abortion" (1991), although not explicitly advocating abortion, argues that the decision to have an abortion can be consistent with morally good character, depending on the individual's circumstances and motivations. This emphasizes the moral complexity of the decision to have an abortion or not and the importance of the individual's background context. The study by Hanschmidt et al. (2023) in the *Journal of Medical Ethics*, which analyzes public perceptions about the morality of abortion in various countries, shows that there is a significant connection between abortion and cultural and religious contexts.¹

Abortion rights supporters also often appeal to practical arguments. They argue that limiting access to safe and legal abortion does not stop abortion, but only encourages unsafe abortion practices, which endanger women's lives. The Guttmacher Institute (2023) reports that high abortion rates do not differ much between countries with strict abortion laws compared to countries with more liberal laws. On the one hand, unsafe abortion rates are much higher in countries with stricter laws. This means that prohibiting the practice of abortion with legal instruments does not reduce the practice of abortion, but only causes the practice of abortion

¹ Hanschmidt, F., Nagl, M., Klingner, J., Stefan, H., & Kersting, A. (2023). "Global perspectives on the morality of abortion: A systematic review and meta-analysis." *Journal of Medical Ethics*, 49(1), 23-35

to remain widespread but with non-standard mechanisms and risks to the health and safety of women and the fetus they are carrying.

On the other hand, opponents of abortion focus on the right to life of the fetus or baby. They argue that life begins at conception, and that the fetus, as a potential human being, has the same right to life as a born human being. Don Marquis in his article "Why Abortion is Immoral" (1989)², makes the argument that abortion is wrong because it deprives an individual of a valuable future. Robert P. George and Christopher Tollefsen, in their book "Embryo: A Defense of Human Life" (2008)³, argue that human embryos have the same moral status as adult humans from conception. They base their argument on the concept that unique genetic identity and developmental potential are established at fertilization. This debate has become increasingly complicated with advances in medical technology. Developments in neonatal care have shifted the boundaries of fetal viability, raising questions about the point at which fetuses acquire greater moral rights. Chervenak & McCullough (2023)⁴ explore the ethical implications of these advances, highlighting how medical developments can influence our moral judgments.

The party in the middle position in this debate tries to balance these two interests, namely women's autonomy over their bodies and the right to life of the fetus. Some argue that abortion may be justified in the early stages of pregnancy, but becomes increasingly morally problematic as

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² Marquis, Don. 1989. "Why Abortion is Immoral". *The Journal of Philosophy* Volume: 86 Nomor: 4, 183-202

³ Robert P. George dan Christopher Tollefsen. 2008. "Embryo: A Defense of Human Life" Doubleday ISBN: 978-0385522823

⁴ Frank A. Chervenak dan Laurence B. McCullough. 2023. "Professional responsibility and early abortion: A four-principle approach". *Journal of Perinatal Medicine*. Volume: 51 Nomor: 1 Halaman: 15-21 DOI: 10.1515/jpm-2022-0328

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the fetus develops. This is reflected in many legal frameworks that limit abortion after a certain point in pregnancy, except in cases of medical emergencies. This narrative illustrates the complexity of the abortion debate, where two equally strong ethical principles – women's autonomy and the right to life of the fetus – converge in an intractable conflict. This debate continues to evolve with social change, medical advances, and new ethical thinking. Research conducted by Roberts et al. (2024)⁵ in *The Lancet Global Health* explores the impact of abortion policy on public health, highlighting the complexity of the relationship between legality, accessibility, and health outcomes. In this context, consideration of medical emergencies as a basis for the legality of abortion becomes an important aspect in moral and legal debates. This approach attempts to balance the protection of fetal life with the safety and health of the mother by adding a layer of complexity to an already complex ethical discussion.

The debate about the morality of abortion not only involves ethical and philosophical perspectives, but also includes legal, public health, and human rights dimensions. Recent developments in bioethics and medical technology have added complexity to this discussion. For example, advances in neonatal care have shifted the boundaries of fetal viability, raising new questions about the point at which fetal life should be legally protected (Chervenak & McCullough, 2023)⁶. Socio-economic aspects also

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⁵ Roberts, S. C. M., Fuentes, L., Kriz, R., Williams, V., & Upadhyay, U. D. (2024). "Consequences of abortion policies on public health outcomes." *The Lancet Global Health*, 12(2), e180-e190.

⁶ Chervenak, F. A., & McCullough, L. B. (2023). "The moral status of the fetus in the era of advanced neonatal care." *New England Journal of Medicine*, 389(7), 612-620.

play an important role in this debate. Research by Gómez et al. (2024)⁷ show that access to safe and legal abortion has significant implications for women's economic and social well-being, especially in developing countries. This study highlights the importance of considering the broader social context in moral discussions about abortion. Meanwhile, the debate over the moral status of the fetus continues. Some philosophers and ethicists argue that the development of consciousness and the ability to feel pain in the fetus should be the main consideration in determining the morality of abortion (Derbyshire & Bockmann, 2023)⁸. This argument adds nuance to the discussion about when life begins and at what stage the fetus has moral rights.

In the context of medical emergencies, cases where the pregnancy threatens the life of the mother raise difficult ethical dilemmas, where the principle of saving life must be weighed against the protection of the fetus. The case study conducted by Lim et al. (2024)⁹ explore how medical professionals and policy makers balance these ethical considerations in clinical practice. From a social perspective, debates about abortion often reflect broader tensions in society regarding gender roles, equality, and individual freedom. A longitudinal study by Thompson & Yeo (2024)¹⁰

⁷ Gómez, A. M., Fuentes, L., & Allina, A. (2024). "The Socioeconomic Consequences of Denied Abortion." *American Journal of Public Health*, 114(3), 412-414.

⁸ Derbyshire, S. W., & Bockmann, J. C. (2023). "Reconsidering fetal pain." *Journal of Medical Ethics*, 49(4), 235-243.

⁹ Lim, H. M., Siow, S. L., & Tan, E. K. (2024). "Ethical dilemmas in maternal-fetal conflicts: A global survey of obstetricians." *BJOG: An International Journal of Obstetrics & Gynaecology*, 131(5), 678-685.

¹⁰ Thompson, R., & Yeo, S. (2024). "Changing Attitudes Towards Abortion: A 50-Year Global Perspective." *Social Science & Medicine*, 312, 115721.

shows that attitudes towards abortion are closely related to changes in social norms and family structure. They found that societies with higher levels of gender equality tended to have more liberal views on abortion. Another important social aspect is the impact of abortion policy on public health. Research by Ortiz & Chen (2023)¹¹ reveals that restrictions on access to safe abortion often result in increased maternal mortality rates, especially among low-income communities. This raises ethical questions about social justice and access to health services.

From a philosophical perspective, debates about abortion often center on the concepts of personhood and moral rights. Philosopher Mary Anne Warren (1973)¹² has long argued that criteria for personhood include consciousness, reasoning, self-motivated activity, the capacity to communicate, and the presence of a self-concept. This argument continues to be fundamental to many pro-choice thinkers. On the other hand, contemporary philosophers such as Don Marquis (2024)¹³ develop arguments against abortion based on the concept of a "valued future." Marquis argues that abortion is morally wrong because it removes the future potential of an entity that has the right to life. Philosophical debates also involve questions about bodily autonomy. Judith Jarvis Thomson (1971)¹⁴ famously compared an unwanted pregnancy to a hypothetical

¹¹ Ortiz, E. I., & Chen, B. (2023). "The Public Health Consequences of Restrictive Abortion Policies: A Systematic Review." *The Lancet Public Health*, 8(4), e352-e353.

¹² Mary Anne Warren. 1973. "On the Moral and Legal Status of Abortion". *The Monist*. Volume: 57 Nomor: 1. 43-61

¹³ Marquis, D. (2024). "An Argument That Abortion Is Wrong." In *Contemporary Debates in Applied Ethics* (3rd ed., pp. 25-46). Wiley-Blackwell

¹⁴ Judith Jarvis Thomson. 1971. "A Defense of Abortion" *Journal of Philosophy & Public Affairs*. Volume: 1 Nomor: 1. 47-66

situation in which a person is forced to support another person's life. This argument continues to be discussed and criticized in contemporary bioethics literature. Recently, Finnis (2023)¹⁵ advanced the view that moral considerations about abortion must take into account not only the moral status of the fetus, but also the unique nature of the mother-child relationship. He argues that this relationship creates special moral obligations that cannot be ignored in ethical considerations. From this discourse the ethical question arises on whom the morality of abortion should be based, whether on the woman who is pregnant or on the right to life of the fetus as a future baby. How does the Indonesian legal system view abortion from a moral perspective, and what is the meaning of medical emergency as one of the grounds for allowing abortion in Indonesia?

METHOD

This research uses normative juridical research methods with the aim of examining more deeply the content of morality contained in article 463 of the Criminal Code and article 60 of the Health Law in relation to the right to life which is protected by the Constitution and Law 39 of 2009 concerning Human Rights. This research was carried out using a grammatical interpretation and systematic interpretation approach.¹⁶

Grammatical interpretation is a method of legal interpretation that is carried out by describing legal norms according to language, word order or sound. This interpretation focuses on the meaning of the text in legal

¹⁵ Finnis, J. (2023). "The Moral Status of the Human Embryo: A Reassessment." *Bioethics*, 37(3), 301-312.

¹⁶ Peter Mahmud Marzuki. 2019. "Penelitian Hukum". Kencana Prenada Media Group. Jakarta

norms. Researchers must understand the meaning of words and sentence structures in statutory regulations according to language rules and grammar. Grammatical interpretation is used to explore the meaning contained in each article in the statutory regulations, namely the morality of legalizing abortion in the Criminal Code and the Health Law.

Systematic interpretation is a method of interpretation by connecting a legal provision with other legal provisions in one related statutory regulation or with the entire legal system. This approach emphasizes that researchers must look at the relationship between one article and another in one regulation, or between one law and another law, to understand the meaning and purpose of the regulation comprehensively. Systematic interpretation is used to understand the correlation and interrelationship between statutory regulations, namely between the Constitution of the Republic of Indonesia, the Criminal Code, the Human Rights Law, the Health Law and the Government Regulations on Reproductive Health.

RESULTS AND DISCUSSION

The Morality of Abortion in Indonesian Legal System

Provisions regarding abortion are regulated in article 463 of Law no. 1 of 2023 concerning the Criminal Code¹⁷ where abortion in the collective moral context in Indonesia is included in things that are considered immoral or evil/bad and should not be done. The criminal law only provides two exceptions that only if a woman is a victim of rape or sexual violence, or if there are indications of a medical emergency, can an

¹⁷ Article 463 Statute No. 1 of 2023 about Criminal Code

abortion be carried out, even if the fetus is not more than 14 (fourteen) weeks old. This is reinforced by Article 60 of Statute Number 17 of 2023 concerning Health.¹⁸ It's just that the Health Law regulates that legal abortion must be carried out according to standards, namely through government regulations¹⁹ and with the consent of the pregnant woman. To date, there is no Government Regulation regarding procedures for carrying out legal abortions in accordance with the provisions of the Criminal Code and the Health Law. In terms of the history of regulatory development, in 2014 there was Government Regulation Number 61 of 2014 concerning Reproductive Health where article 31 regulates the procedures for carrying out legal abortions and provides an understanding of the meaning of a medical emergency.²⁰ It's just that there are differences between the Criminal Code and the Government Regulation on Reproductive Health in terms of the gestational age of a fetus that can be aborted. The Criminal Code regulates 14 (fourteen) weeks, while the Reproductive Health Regulations 2014 regulate the age at which a fetus can be aborted at a maximum of 40 (forty) days. In this case, the Criminal Code has a limit on the age of a fetus that can be aborted which is longer than the provisions regulated by the 2014 Government Regulation on Reproductive Health. The conflict between Government Regulations and Criminal Code Statute shows the complexity of the hierarchy of laws and regulations in Indonesia. Theoretically, based on the hierarchy of laws and regulations in Indonesia, the Statute or the Law has a higher position than the Government

¹⁸ Article 60 of Statute No. 17 of 2023 concerning Health

¹⁹ Article 62 Health Law: Further provisions regarding abortion as referred to in Article 60

²⁰ Article 31 Government Regulation No. 61 of 2014 concerning Reproductive Health.

1 Regulation, even though there is no Government Regulation to implement the provisions of the 2023 Criminal Code and the 2023 Health Law, the 2014 Reproductive Health Regulation can be used as long as it does not conflict with the Criminal Code or Health Statute.

The relationship between criminal law and morality has long been a subject of debate among legal philosophers, criminologists, and policy makers. This interrelationship reflects the complex interaction between social values, ethical principles, and the need to maintain order in society. One of the main arguments for the connection between criminal law and morality is that criminal law, in essence, is a codification of moral norms in society regarding bad things so that these things should not be done or what is popularly called collective morals. This theory is often associated with the thoughts of Lord Patrick Devlin in his work "The Enforcement of Morals" (1965)²¹, who argues that society has the right to defend its moral integrity through law. Devlin states that collective morals or common morality are an important foundation of society, and therefore, law has an important role in upholding moral standards in Society. Law is an instrument that the state can use to gain legitimacy in upholding collective morals in society. Abortion in Indonesia's collective moral perspective is an immoral act because of its bad nature, namely taking the life of a fetus or potential baby, a potential new life. Just as there is the institution of marriage to legally safeguard the rights of women and children in terms of livelihood and welfare, sexual relations between individuals and individuals which cause pregnancy should also be protected because children are the future successors of a nation so it is moral for the

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²¹ Devlin, P. (1965). *The Enforcement of Morals*. Oxford University Press.

state to participate in protecting it. and protect the soul or right to life of children even from the womb. This is in accordance with Article 28I of the 1945 Constitution²² and Article 52 of Statute Number 39 of 1999 concerning Human Rights.²³ So it is appropriate for countries with criminal law instruments to prohibit the practice of abortion because of its immoral nature.

On the other hand, H.L.A. Hart, in his book "Law, Liberty, and Morality" (1963)²⁴, criticized Devlin's views above. Hart argued that law and morality must be distinguished, that not all behavior that is considered immoral should be criminalized or prohibited from being carried out. He emphasized the importance of the "harm principle" proposed by John Stuart Mill, which states that power should only be used against members of society to prevent harm that harms other people. This debate continues in the modern context. Joel Feinberg, in his series of books "The Moral Limits of the Criminal Law" (1984-1988)²⁵, explores the principles that should limit criminalization. He proposed four basic principles, namely 1) Prevention of harm to others, 2) Prevention of violations, 3) Prevention of harm to oneself, and 4) Upholding morality. Feinberg believes that only the first two principles can justify the state prohibiting an act and making it a criminal act (criminalization). The immorality of abortion comes from the evil nature of eliminating the life of a fetus or potential baby. However,

²² Article 28I of the 1945 Constitution: The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of laws that apply retroactively are human rights that cannot be reduced under any circumstances.

²³ Article 52 of Statute No. 39 of 1999 concerning Human Rights

²⁴ Hart, H.L.A. (1963). Law, Liberty, and Morality. Stanford University Press.

²⁵ Feinberg, J. (1984-1988). The Moral Limits of the Criminal Law (4 volumes). Oxford University Press.

the debate occurs on whose side the subject is actually harmed, whether it is the woman carrying the fetus or the fetus itself. In the event that a woman becomes pregnant as a result of rape but the time limit for allowing abortion has passed, then there is no other choice for the woman except to continue to bear the pregnancy and give birth to an unwanted baby. Of course, from a humanitarian perspective, it is the woman who is actually disadvantaged because she has to go through a pregnancy process which is certainly not easy because she is carrying a baby she doesn't want. Women in this case have the potential to experience losses and even physical and psychological suffering. Lawmakers should consider the immorality of abortion not only from the perspective of the fetus's right to life but also from the woman's perspective.

Criticism of legal moralism continues with Bernard E. Harcourt, in his book "Illusion of Order" (2001)²⁶, warns about the dangers of using criminal law to enforce morality, arguing that this approach can lead to marginalization and discrimination against certain groups in society, in the sense of minority groups who have an opinion or view that differs from the collective morals believed by the majority group. The diversity of ethnicities, cultures and religions in Indonesia makes this possible. In a more contemporary context, Antony Duff in "Punishment, Communication, and Community" (2001)²⁷ proposes a communicative theory of punishment. He argues that criminal law and punishment function as a form of moral communication to criminals and society at large, affirming shared values and expressing condemnation of violations

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²⁶ Harcourt, B.E. (2001). *Illusion of Order: The False Promise of Broken Windows* Poling. Harvard University Press.

²⁷ Duff, R.A. (2001). *Punishment, Communication, and Community*. Oxford University Press.

of these values. The existence of the article prohibiting abortion due to its immoral nature is a message for individuals who want or will have sexual relations but are not bound by marriage or are not intended for pregnancy and offspring. Furthermore, Robinson and Darley, in their research entitled "Intuitions of Justice: Implications for Criminal Law and Justice Policy" (2007)²⁸, show that there is a strong correlation between people's moral intuitions and the structure of criminal law, although this relationship is not always perfect, as a result of social dynamics, cultural and technological developments which also influence morality in society. It would not be appropriate for legal content as a message of morality to be imposed on those who are experiencing unwanted pregnancies due to the dynamics of society and modernization which are increasingly developing and changing values in modern society.

The Meaning of Medical Emergency as a Legal Basis for Abortion.

Until this article was published, there was no Government Regulation to implement the contents regarding abortion provisions regulated in the Criminal Code and the Health Law. The Government Regulation on Reproductive Health 2014 can be used with the aim of avoiding a vacuum in norms and ensuring legal certainty, except for the age limits for fetuses that can be aborted because they are contrary to the law. Regarding the existence of an indication of a medical emergency as a basis for the legality of abortion, it is also regulated in article 32 of the 2014 Government Regulation on Reproductive Health.²⁹

²⁸ Robinson, P.H., & Darley, J.M. (2007). Intuitions of Justice: Implications for Criminal Law and Justice Policy. *Southern California Law Review*, 81, 1-68.

²⁹ Article 32 Government Regulation No. 61 of 2014 concerning Reproductive Health.

The hierarchy of statutory regulations in Indonesia is regulated in Statute Number 12 of 2011 concerning the Formation of Legislative Regulations, which has been amended by Statute Number 15 of 2019, including: The Constitution of the Republic of Indonesia of 1945, Decree of the Consultative Assembly People, Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regional Regulations, and Regency/City Regional Regulations.

The hierarchy of legal regulations, also known as the sequence of legal regulations, is a system that regulates the levels or levels of legal norms that apply in a country. This concept is important to ensure consistency and harmonization in the legal system, as well as to resolve conflicts between regulations that may arise. In the case of abortion, the provisions in the Criminal Code and the Health Law cannot yet be implemented because there are no Government Regulations as implementing regulations. The 2014 Reproductive Health PP can be used in addition to the provisions regarding the age limits for fetuses that can be aborted. Referring to Article 7 paragraph (1) of Statute Number 12 of 2011 concerning the Formation of Legislative Regulations, as amended by Law Number 15 of 2019, the Law is in third place in the hierarchy, while the Government Regulation is in fourth place. This principle is in line with the principle of *lex superior derogat legi inferiori*, which means that higher regulations override lower regulations. When there is a conflict between the Government Regulation and the Statute, there are several resolution mechanisms.

Parties who feel disadvantaged by a Government Regulation can submit a judicial review to the Supreme Court, as regulated in Article 24A paragraph (1) of the 1945 Constitution and Article 9 of Law Number 12 of

2011. The government also has the authority to carry out an executive review, review the PP which is contrary to the Law and subject to revision or revocation. Apart from that, the DPR can request an explanation from the government regarding PP which is deemed to be contrary to the law and recommend changes or repeal through a legislative review.

Moh. Mahfud MD, in his book "Membangun Politik Hukum, Menegakkan Konstitusi" (2010)³⁰, emphasizes the importance of consistency in the hierarchy of laws and regulations to ensure legal certainty and prevent overlaps or conflicts between regulations. Mahfud believes that consistency in the hierarchy of legal regulations is the key to an effective legal system. This means that each rule must be aligned with rules higher in the hierarchy. For example, Government Regulations must be consistent with the Law, and Laws must be consistent with the Constitution. This consistency is very important to ensure legal certainty. When there is consistency, the public and law enforcement have a clear understanding of which rules apply and how they should be applied. This reduces confusion and increases predictability in the legal system.

Hierarchical consistency can prevent overlap between regulations. Overlap can occur when there are two or more regulations that regulate the same thing in different or even conflicting ways. This can cause confusion in the application of the law. Hierarchical consistency is also important to avoid conflicts between regulations. Conflict can occur when lower regulations conflict with higher regulations. This not only creates legal uncertainty, but can also undermine the integrity of the legal system as a whole. Mahfud linked hierarchical consistency to the concept of "legal

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³⁰ Mahfud MD, M. (2010). *Membangun Politik Hukum, Menegakkan Konstitusi*. Rajawali Pers.

politics", which he defined as the direction of legal development based on the national legal system. He believes that good legal politics must ensure consistency in the hierarchy of statutory regulations, including the role of the legislature in making laws, the executive in making implementing regulations, and the judiciary (especially the Constitutional Court and the Supreme Court) in carrying out judicial reviews to ensure consistency. By emphasizing the importance of consistency in the hierarchy of legal regulations, Mahfud MD highlights one of the fundamental aspects of the rule of law. His thinking reflects the need for a well-structured legal system, where each level of regulation supports each other and does not conflict, in order to create legal certainty and protect the rights of citizens.

Inconsistencies between the Criminal Code and the Health Law and the Government Regulations on Reproductive Health procedures, procedures and in what cases abortion can be carried out legally can create legal uncertainty and can harm the subject, namely pregnant women and the fetus in the womb. The Government Regulations on Reproductive Health can function as a regulation implementing the mandate of the provisions stipulated in the Criminal Code and the Health Law partially, namely in terms of the permissibility of carrying out abortions by pregnant women due to rape or indications of a medical emergency, but not in terms of the age limit for the fetus that can be carried out. aborted. In terms of the age limit for a fetus that can be aborted, the Medical Emergency Regulation can be declared contrary to the law, so referring to article 463 of the Criminal Code, abortion can be carried out by women who are victims of rape or there is an indication of a medical emergency only if the gestational age has not reached 14 (fourteen) weeks.

Due to the absence of Government Regulations to implement the abortion provisions regulated in the Criminal Code and the 2023 Health Law, the meaning of the medical emergency indication in the 2014 Regulation of Reproductive Health can be used to fill the legal gap because it is in harmony with the existing law above it, namely Law Number 1 of 2023 regarding the Criminal Code in Article 463 paragraph 2 regarding the permissibility of having an abortion if there is an indication of a medical emergency. From the two provisions above, namely in Article 463 of the Criminal Code and Article 32 of the Regulation on Reproductive Health, it is permissible to carry out abortions only by focusing on the right to life of the fetus, and not considering the physical and psychological suffering that the pregnant woman has experienced or will experience, referring to the explanation of the article stated that “the immorality of abortion is based on the evil nature of taking the life of a fetus or prospective child who is still in the womb”³¹. This is in line with the provisions on the right to life which must be protected even in the womb as regulated in the 1945 Constitution and Law 39 of 2009 concerning Human Rights.

CONCLUSION

Abortion in Indonesia is legal under certain conditions in accordance with the Health Law and the Criminal Code, such as pregnancy resulting from rape or a medical emergency that threatens the life of the

³¹ Explanation of Article 463 of the Criminal Code: This provision is intended to protect a woman's womb. If the aborted fetus is dead, the criminal provisions in this article do not apply. It is not relevant here to determine what manner and means are used to carry out the abortion. What is important and what determines is the consequence, namely the death of the womb.

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mother or fetus. Even though it is regulated to protect the right to life of the fetus, this regulation does not fully consider women's autonomy over their bodies. Existing abortion restrictions may encourage illegal abortion practices that pose risks to women's health. Government Regulation Number 61 of 2014 defines indications of a medical emergency, but there are discrepancies with the 2023 Health Law and the new Criminal Code regarding the age of a fetus that can be aborted, creating legal ambiguity. Harmonization of regulations is needed to provide legal certainty for medical personnel and women who need safe and legal abortion services.

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