

## Conference Paper

# Implementation of Abortion Regulations on Medical Emergency Indications in Hospitals Based on Legal Aspects

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Abortion is one method to prevent unwanted births. This method was born along with the development of human life with various reasons and considerations, both legal and medical considerations. Abortion is a crucial law in health law. But abortion for several medical reasons is a legal way to provide solutions to safety problems related to pregnancy. As the executors of the abortion act, namely medical personnel who are closely related to existing regulations or policies, it is still a pro and contra polemic. Therefore, it is necessary to do an analysis to determine the clarity of the legality of the implementation of abortion on indications of medical emergencies in hospitals associated with abortion law regulations. The research design used in this study is qualitative through a descriptive analysis approach related to the legality issue of abortion regulations indicating medical emergencies between the Health Act and the Abortion Criminal Code. The sample in this study was an obstetrician with a medical team, namely midwives who worked in the delivery room. This study aims to determine the factors that influence the implementation of abortion regulations based on indications of medical emergencies in hospitals, specifically referring to Health Law No. 36 of 2009 with the Criminal Code on abortion. The factors that influence the implementation of abortion in hospitals are: the discovery of indicators or triggers that an abortion must be carried out in accordance with the Health Law Number 36 of 2009; it must be carried out as soon as possible because it endangers the patient's life; carried out according to health standards and applicable laws; and the approval of both the parties to carry out official and legal abortion procedures and mechanisms according to legal and applicable rules. Based on this, abortions with indications of medical emergencies are often carried out in hospitals and can be justified by the principle of legitimate defense. Legal issues regarding the regulation of abortion indicative of a medical emergency, as long as they refer to the procedures according to the Health Law, the legal issue of the Criminal Code cannot be brought to the surface, because abortion on the indication of a medical emergency is a medical action that must be carried out.

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## 1. Introduction

Abortion is included in human civilization, usually as an effort to act naturally because humans do not want the pregnancy. Along with the development of various nations have recognized and used several types of plants that are considered efficacious for uterine contractions to release the fetus. This abortion can occur due to intentional causes (*abortus provocatus*) and natural causes in general, namely due to the pathophysiological process of a pregnancy (*spontaneous abortion*). Desired abortion due to health-related reasons is permitted by the existing legal rules (*abortus therapeuticus*), but other than that the state has strictly prohibited the practice of abortion (*abortus criminalis*) [1].

Abortion is a crucial law in health law. But in reality, abortion for several medical reasons is a legal way to be taken in providing solutions to safety problems related to pregnancy [2]. In the implementation of these provisions, the provisions are very clear, and even then it is in line with the legal rules that contain the firmness of not allowing the practice of abortion. On the other hand, the state is obliged to provide health insurance to women, so abortion for certain reasons is allowed, with the help of medical personnel who do it according to existing legal rules. In the medical world, abortion is known as an abortion as an effort to get the conception process out of the fetus [3]. The World Health Organization (WHO) defines abortion [4] as a way of stopping the life of a womb under 165 days or weighing less than 1,000 grams. Abortion can also be interpreted to remove or dispose of premature embryos or fetuses, this term is also called provocative abortion.

Termination of pregnancy has always been a special topic in life, both legally and scientifically [5]. As the number of abortions increases day by day, it seems that there is a very significant space in the growth of cases, this causes legal and social anxiety and turmoil because it is not only a matter of law enforcement rules but also contains the norms and morals of a just nation. In the provisions of the Criminal Law, intentional abortion can be grouped in the form of the crime of loss of life Chapter XIX Articles 346 to 349 of the Criminal Code (Book of Criminal Law). In the health law it is written that only in an emergency such action is carried out as a guarantee of legal protection for the health of pregnant women and their fetuses, this is what is meant as an abortion in the medical category. The existence of the practice of abortion became a concern after the formation of regulations related to health law, the existence of which caused

turmoil for the pros and cons among medical practitioners themselves in carrying out their profession because there were conflicting provisions, namely articles 75, 76 and 77 of Law Number 36 of 2009.

The issue of abortion became a polemic when a Government Regulation stipulates that concerning women's reproductive health from Article 31 to Article 39 regulates the permissibility of fulfilling the conditions as contained in the regulation. All of the abortion articles are regulated in the chapter related to the issue of the cause of an abortion. In fact, in it there are exceptions and conditions, Article 31 Paragraphs (1) and (2) state the special conditions that allow abortion in government regulation number 61 of 2014 Article 31 states: a. indication of medical emergency or, b. pregnancy due to rape. Paragraph (2) The act of abortion due to rape as referred to in paragraph (1) letter b can only be performed if the pregnancy is 40 days old at the latest calculated from the first of the last menstruation. The Government Regulation in Article 32 paragraph (1) states what is meant in Article 31 Paragraph (1) letter a.

The pro-contra polemics occur not only in society but also as the main executor in the abortion act, namely medical personnel, both doctors and nurses or midwives, assessing that these regulations are contrary to the rules of criminal law in the chapter on crimes against life and contrary to the oath of medical personnel. The Hippocratic oath made by Pythagoras which forbids abortion, as well as in all religious teachings, is related to the doctor's oath to human life starting from the beginning of conception, soul and life have an absolute right to live [6]. So ending the life of the fetus by force would be the same as committing a crime against life. In carrying out their profession, professional association institutions such as IDI, PPNI, and IBI as a forum for the auspices of the profession give an ultimatum to abortion, namely if the pregnancy endangers the life of the mother and the fetus itself, this commitment is contained in the rules of the professional oath. This statement is a complete professional oath commitment and is not affected by anything and is formed independently and protected by law [7].

It is necessary for everyone to know and understand whether abortion is still carried out in the hospital or prohibited to be carried out, and if the hospital continues to perform abortions, it is necessary to analyze what factors are related to regulations that cause hospitals to dare to carry out these actions. Then viewed from the legal aspect, whether the abortion carried out by the hospital in the end will have an impact on legal cases up to legal prosecution to the hospital.

## 2. Methods

The research design used in this study is qualitative through a descriptive analysis approach, namely describing and analyzing the content and structure of positive law, where these activities determine the content or meaning of the legal rules that are used as references in solving legal problems that are the object of study. The author uses primary data in the form of data obtained from field research and secondary data obtained from library research, which consists of legal entities.

The sample in this study was an obstetrician with a medical team, namely midwives who worked in the delivery room. Participants in this study were taken by purposive sampling with a total sample of 6 people with the following criteria: obstetrician who works in the hospital delivery room and plays a role in handling abortion procedures, a medical team who is trusted in handling abortions in hospitals, has handled procedures abortion, and willing and able to communicate well and cooperatively.

Data collection technique; namely for primary data, this data collection technique uses interviews. The author conducted interviews with respondents in this case medical personnel and data in the hospital environment. For secondary data, the data collection technique is literature study. Literature study is research carried out using literature (library), in the form of books, scientific journals, online/internet media and other relevant references [8].

Interview data used research tools, namely voice recorders to record the conversations of researchers and participants, as well as field notes to help researchers record other data during the interview process. After the interview process was completed, the data from the interviews were collected and further data analysis was carried out on the data.

## 3. Results and Discussion

In the management related to abortion regulations in hospitals, one of the policy rules in handling and how abortion is carried out and carried out by medical personnel in carrying out medical actions as an effort to maintain health in this case abortion as a form of saving the life of a pregnant woman related to diagnosis problems health and must pass a series of stages of due diligence in accordance with the rules of health law number 36 of 2009 [9]. In addition, policy rules are applied and affirmed as an effort

by the hospital to be responsible for providing space and health facilities in carrying out medical actions by their health workers and this must be accompanied by a legal umbrella related to abortion law both in the Criminal Code in taking actions. medical care for patients as a reference and reference to the Health Law Number 36 of 2009 and Government Regulation Number 61 of 2014 concerning reproductive health.

Abortion for medical emergency indications can be justified by the principle of legitimate defense (legitimate self-defense). Where people have the right to defend themselves if there is something dangerous that threatens their life. In the case of a dangerous and life-threatening pregnancy, abortion or aborting the fetus is not the purpose of the act. The purpose of abortion is to save the life of the mother, and the death of the fetus is only the effect of the act, in an emergency risk it must occur. Because when a pregnancy is life-threatening, pregnant women will always be faced with choices that are equally valuable, and difficult. In principle, if both pregnant women and their fetuses can be saved, then the abortion route will not be taken [10].

Article 5 letter b states: the government is responsible for providing safe, quality and affordable health services as well as medicines and medical devices that support health services.

The following is a series of data related to the basic principles in the implementation of abortion in hospitals seen from the various handling of abortion itself, namely:

- a. Approximately 12-15 percent of pregnancies terminate spontaneously before 20 weeks of age so it is not possible to know at the outset, whether abortion is imminent or progresses to abortion insipien, incomplete or multi factor.
- b. The causative factor is multifactorial.
- c. Ultrasound can determine fetal heart rate (> 5mm) and identify abnormalities of an organ.

Several factors influence the implementation of abortion regulations in hospitals:

- a. Medical emergency indications have been fulfilled for patients who are indicated to endanger the patient's life and health in accordance with the Health Law Number 36 of 2009. That is, a history of disease or malformation in the fetus is found or caused by other factors that threaten the life and health of a pregnant woman.
- b. There is agreement from both parties to carry out official and legal abortion procedures and mechanisms according to legal and applicable rules.

TABLE 1: Implementation of Abortion Regulations.

Implementation of the principles of implementing abortion in hospitals	Based on applicable health law
Hospitals serve and carry out abortions for medical emergencies and the basic principle is to save the life and health of a pregnant woman if because her pregnancy can threaten the health and life of a pregnant woman	Based on article 53, second part of health services, paragraph one, service providers, chapter VI health efforts, Law No. 36 of 2009 namely individual health services aimed at curing disease and restoring individual and family health. Health workers are authorized to provide health services in accordance with Article 23, chapter V of resources in the health sector, part one of Law No. 36 of 2009 PP No 61/2014 concerning reproduction of article 32 paragraph 1 indications of medical emergencies as referred to in article 31 paragraph 2 letter a include: Pregnancy that threatens the life and health of the mother and/or Pregnancy that threatens the life and health of the fetus, including those who suffer from severe genetic diseases and/or congenital or irreversible defects that make it difficult for the baby to live outside the womb
Health workers in this case are doctors and nurses or midwives who carry out abortions according to the standards of health workers who have the skills and authority that have certificates determined by the minister.	Article 33: (1) Determination of the existence of an indication of a medical emergency as referred to in Article 32 is carried out by the abortion eligibility team. (2) The team as referred to in paragraph (1) shall consist of at least 2 (two) health workers chaired by a doctor who has the competence and authority. (3) In determining the indication of a medical emergency, the team as referred to in paragraph (1) must conduct an examination in accordance with the standards. (4) Based on the results of the examination as referred to in paragraph (3), the team as referred to in paragraph (1) shall make a certificate of eligibility for abortion
Aborigines based on the diagnosis of medical emergencies recorded from 2019 to 2020 based on data obtained from hospitals, comorbidities with abortion, namely: FEB at gestational age over 26 weeks Oligohydramnios (under 6 weeks of gestation) History of SC under 6 weeks of age KPD The second stage is long around the age of the fetus 20-24 weeks BO Remaining placenta at 10-12 weeks of gestation When one is elongated Breech location	Law No. 36 of 2009 concerning Health Article 75 paragraph (2), based on: a. Indications of Medical Emergency detected at an early age of pregnancy, both those that threaten the life of the mother and/or fetus, who suffer from severe genetic diseases or defects
Spontaneous abortion is usually carried out without counseling at the pre-abortion stage only at the post-abortion stage because previously the fetus and mother were in good condition and there was no counseling about an abortion related to comorbidities, but when brought to the hospital the patient was very sick. bleeding or heavy bleeding occurs usually due to an accident that results in a collision in the fetus which if the pregnancy continues, it is possible to have defects or not develop, a curettage is performed	PP No. 61/2014 concerning reproductive health in article 37 paragraph 1 abortion based on indications of a medical emergency and pregnancy, rape can only be done after going through counseling
Specifically for accredited abortion training, some medical personnel have never received a certificate or have been accredited from activities such as seminars or training, while some medical personnel who have received accreditation certificates for training related to abortion have been obtained while in the work environment elsewhere.	PP No. 61/2014 concerning reproductive health article 36 paragraph 1 doctors who perform abortions based on indications of medical emergencies and rape pregnancies as referred to in article 35 paragraph 2 letter a must receive training by an accredited training provider

c. If an abortion is carried out because it must be carried out as soon as possible because it endangers the patient's life, for example, the membranes have already

ruptured and caused the baby to be poisoned due to something that happened to a pregnant woman; something that happens requires medical personnel to choose between the mother and the baby if the action is carried out without the prior consent of the parties. hospitals and medical personnel make efforts to save the lives of pregnant women first without the consent of the family and are protected and legalized by law because the goal is for the safety of the lives of pregnant women first, then reports and administratively according to hospital provisions and applicable law. This action is in accordance with the mandate in the code of medical ethics (kodeki) which is a guideline for Indonesian doctors who are members of the IDI (Indonesian Doctors Association) in carrying out medical practice, namely article 1 which states: every doctor must uphold, live and practice the doctor's oath, which Then article 2 states: a doctor must always carry out his profession according to the highest standard [11].

d. Abortion is carried out in accordance with applicable health and legal standards. The regulation of abortion in the implementation of medical indications for maternal health in the criminal law system in Indonesia refers to the rule of law and is regulated in Articles 299, 346, 347, 348 and Article 349 of the Criminal Code. In addition to containing a regulation on the rule of law related to health No. 36 of 2009 concerning Health which also regulates the crime of abortion contained in Articles 75, 76, and 77. That rule was strengthened by PP. 61 of 2014 concerning reproductive health which contains the rules and conditions on how abortion is protected by law.

e. Abortion is carried out after pre- and post-action counseling. Pre-abortion counseling for some cases is sometimes skipped, considering that the safety of a pregnant woman when she goes to the hospital has been identified in an emergency, usually the patient is the result of a referral from another hospital whose counseling phase has never been done in the hospital, but for post-abortion usually this stage is always a priority in treatment or healing and post-abortion recovery, only for counselors to be carried out by hospital medical personnel, not counselors in their field, meaning not from professional counselor professions.

According to the Concept of Medical Emergency According to Government Regulation Number 61 of 2014 concerning Reproductive Health, article 31 paragraph (1) states: namely a condition or disease that threatens the health of the mother and threatens the life and health of the fetus. What is meant by threatening is when the physical and/or mental condition which if the pregnancy is continued will reduce the condition of a pregnant woman, disturb and threaten her life and mental safety. Meanwhile, what

is meant by the threat of death in which there is a decline in health and conditions where there is fear of loss of life if the pregnancy is continued will result in the safety of the life of the pregnant mother and the fetus being born unable to survive long independently, especially if accompanied by severe gene disease or birth defects. which is quite serious, or the system for improving the condition of the fetus is very unlikely (Explanation of Government Regulation Number 61 of 2014 concerning Reproductive Health). So in such a case it is said to be a medical emergency, then conditions like that are included in the category of legal abortion according to medical rules and on the basis of medical indications according to existing legal regulations. This abortion is known as therapeutic abortion, which is the termination of a pregnancy due to health problems.

Abortion can be carried out on pregnant women on the basis of saving the life of a pregnant woman on an indication of a medical emergency, meaning that if a pregnancy is found that is very dangerous if it continues and threatens the safety of the pregnant woman, an abortion must be carried out as soon as possible, either through counseling or not because usually in some cases If the patient is there, for example, a referral patient who has never previously had a pregnancy examination or consultation regarding his pregnancy at the hospital, medical action can be taken if at that time the patient is a pregnant woman who is already in a safety emergency, at that time the doctor must make a quick and appropriate decision that the patient it is appropriate or not to be aborted. Determination of indicators that in an emergency situation everything is determined by the abortion eligibility team consisting of two health workers, where the two abortion eligibility teams must be known by doctors who have the competence and authority. In determining whether there is an indication of a medical emergency, the abortion eligibility team must carry out an examination according to standards. If the results of the examination have been carried out on the patient, the abortion eligibility team will make a certificate of abortion eligibility, that the patient may have an abortion in accordance with article 33 which states:

(1) The determination of the existence of an indication of a medical emergency as referred to in Article 32 is carried out by the abortion eligibility team.

(2) The team as referred to in paragraph (1) shall consist of at least 2 (two) health workers led by a doctor who has the competence and authority.

(3) In determining the indication of a medical emergency, the team as referred to in paragraph (1) must conduct an examination in accordance with the standards.



(4) Based on the results of the examination as referred to in paragraph (3) states: that the team as referred to in paragraph (1) makes a certificate of eligibility for abortion. Determination of eligibility for abortion in accordance with legal procedures and provisions set by the hospital must have passed a feasibility test on the basis of a medical emergency indication, which refers to saving the life of a pregnant woman such as because of a history of disease that can threaten a mother's life such as nephrotic syndrome, which is a disease suffered by the patient because of proteinuria, low albumin in the blood and edema. Edema is caused by protein that continuously comes out with urine [12] in addition to severe defects (abnormalities) that are usually suffered by the fetus in the womb is ectopia cordis (the fetus will be born without a chest wall, so the heart can be seen). In the medical world, there are certain indications to identify whether the illness suffered by a pregnant woman can be said to be a medical emergency or endanger the safety of her life and also threatens the life and health of the fetus she is carrying.

From the description of the results of the research on the implementation of abortion regulations for indications of medical emergencies, the researchers observed and analyzed that the existing legal rules were generally effective in their implementation in hospitals and this became the basis for the policy of abortion for medical emergency cases by the hospital. In carrying out an abortion, it is necessary to select the conditions under which abortion is permitted, so the hospital is based on the criteria contained in the Health Law Number 36 of 2009 and this is a factor that influences the implementation of abortion regulations in hospitals. Legal issues regarding abortion regulations indicating medical emergencies as long as referring to procedures according to the Health Law, legal issues regarding the Criminal Code cannot be raised.

## 4. Conclusion

The regulation of abortion in the implementation of medical indications for maternal health in the legal system in Indonesia refers to the rule of law and is regulated in Articles 299, 346, 347, 348 and Article 349 of the Criminal Code. In addition to containing a regulation on health-related legal regulations Number 36 of 2009 concerning Health which also regulates the crime of abortion contained in Articles 75, 76, and 77. That rule is also strengthened by Government Regulation Number 61 of 2014 concerning

reproductive health which contains rules and the conditions under which abortion is protected by law.

The indicator for abortion refers to the Health Law No. 36 of 2009 on indicators that exist in the hospital. That there is a history of disease or malformation in the fetus or caused by other factors that threaten the life and health of a pregnant woman. Abortion based on pregnancy that threatens the health and life of the mother and/or fetus, including those that indicate a gene disease or fatal DNA abnormality or birth defect, or are diagnostically incurable so that it is predicted through various examinations that the chances of survival are very small.

Legal issues regarding the regulation of abortion indicative of a medical emergency as long as it refers to procedures according to the Health Law No. 36 of 2009 then the legal issue of the Criminal Code cannot be brought to the surface, because in medicine *abortion provocatus medicinalis* or abortion on indication of a medical emergency is an abortion medical act that must be carried out against pregnant women in emergency conditions, which if abortion is not carried out, it can threaten the life of the pregnant woman [13]. It's just that if the provisions at the time of abortion do require clear regulations and legal umbrellas so that medical personnel and patients are safe in carrying out their medical actions and in accordance with legal provisions so that existing legal conflicts do not become obstacles in the applicable criminal law code.

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