

## Efforts to Protect the Legal Rights of Suspects of Abortion

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### ARTICLE INFO

#### Keywords :

Protection; Rights of suspects; Abortion.

#### How To Cite :

Rizki., Puluhulawa, Moh. R.U., Achir, N. (2019). Efforts to Protect the Legal Rights of Suspects of Abortion *Estudiante Law Journal* 1 (1): 161-169

#### DOI :

### ABSTRACT

This study aims to find out how the Protection of The Rights of Suspects of Abortion Crimes in the City of Gorontalo and to find out what are the factors inhibiting the protection of the rights of suspected abortion crimes in the city of Gorontalo. This study is empirical research which in other words is field research, which is to review the provisions of applicable law and what happens in the community. The results of this study confirm that abortion is a strictly prohibited act by article 75 paragraph (1) of Law No. 36 of 2009 on health. In addition, this study refers to the protection of the rights of suspected abortion crimes, which is the concept where the law can provide justice, order, certainty, expediency, and peace. However, in this case, the suspect did not get his rights as stipulated in Article 50 of the Kitab Undang-Undang Hukum Acara Pidana, and contrary to Article 110 of the Kitab Undang-Undang Hukum Acara Pidana that the process of handling cases has a provision of days in the investigation process. The evidence that this case has stagnated for almost 1 (one) year and until now did not get clear legal certainty. In addition, the suspect did not make any effort because maybe the suspect did not know that he had the right to make legal efforts by the provisions of the law. Then in this case researchers found a factor that dominates the obstruction of the protection of the rights of suspected abortion crimes in the city of Gorontalo, namely the lack of understanding of the provisions of the day in the investigation, and the suspect who does not know his rights in the process of resolving abortion cases, he just waits for action from law enforcement officials so that in the end the case stagnates for 1 (one) year.

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## 1. Introduction

Promiscuity without marital ties can lead to various conflicts and one of them is abortion. Because the risk of a relationship without a marital bond is an unwanted pregnancy that causes problems for the perpetrators of the promiscuity lifestyle is to maintain the pregnancy or abort the womb (abortion).

Worldwide, an estimated 600,000 women die from causes related to pregnancy and childbirth. About 13% (78,000) of maternal deaths are due to unsafe abortions (*The Alan Guttmacher Institute 1999*). Unsafe abortion is the third leading cause of maternal death in the world.<sup>1</sup>

Illegal abortion is often considered the last way out of the problem of extramarital pregnancy. When women experience unwanted pregnancies, the path to be taken is to perform abortion efforts, both self-made and with the help of others. This is very dangerous and reflects bad behavior. Many people have abortions by seeking unsafe help. So that experience serious complications or death due to being treated by an unqualified person or with a device that does not meet medical standards.

The estimated number of abortions in Indonesia each year is quite diverse. Hull, Sarwono, and Widyanoro (1993) estimate between 750,000 and 1,000,000 or 18 abortions per 100 pregnancies. Saifuddin 1979 (in Pradonodkk 2001) estimated about 2.3 million. While a recent study conducted by the University of Indonesia Health Research Center estimated the incidence of abortion in Indonesia per year at 2 million.<sup>2</sup>

Discussing the issue of abortion is no longer an open secret and not a taboo to talk about. This is because abortion that occurs today has become an actual thing and the event can happen everywhere and can be done by various circles, whether it is done by teenagers who are involved in promiscuity or adults who do not want to be burdened with responsibility and do not want the birth of the baby into this world. Apart from the various reasons for the perpetrators of abortion crimes that have been described above, not a few also perform abortions on health considerations (*abortus provocateurs medical*) or do so based on other reasons that are sometimes unacceptable to common sense, such as pregnancy that is not desired by the mother or afraid of giving birth or for fear of not being able to raise children because of the lack of economic conditions of the family.<sup>3</sup>

Based on the results of observations there are cases of abortion that occur precisely in the Buladu Subdistrict, and the case has been revealed by the police on January 18, 2020. IPDA Putri Gita Wulandari, as the Kanit UPPA Gorontalo City Police, explained that after conducting a marathon examination of witnesses and collecting evidence. The police got sufficient preliminary evidence that the two had abortions. This couple deliberately wants to abort the womb for fear of being caught by their parents and the perpetrator

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<sup>1</sup> Kasim, N. M. (2008). Reintreprestasi Hukum Islam Tentang Aborsi. *Jurnal Inovasi*, 5, Pp. 136

<sup>2</sup> KASIM, N. M. (2008). Reintreprestasi Hukum Islam Tentang Aborsi. *Jurnal Inovasi*, 5, 139

<sup>3</sup> <http://www.aborsi.org/hukum/Aborsi.htm>, accessed november 3, 2011

contacts the child shaman. Furthermore, consciously the two perpetrators asked the child shaman to abort the womb.<sup>4</sup>

Gorontalo City Police Chief AKBP Desmont Harjendro explained that a couple who had an abortion are still recorded as students at one of the universities in the city of Gorontalo. This abortion case was revealed when ari-ari could not be issued then the midwife kampong advised the perpetrator to take his lover to the hospital, and in one of these hospitals, it was revealed that the perpetrator had just had an abortion at the agreement of himself and his girlfriend. Currently, the perpetrator is snared with article 194 of the Law of the Republic of Indonesia Number 36 on Health Jo Porigin 55 paragraph (1), article 338 of the Jo article Criminal Law Code from 53 paragraph (1), article 348 paragraph (1) of the Jo Criminal Code article 56 of the Criminal Law Code. While his lover was ensnared with an article from 194 of The Ri Law Number 36 on Health Jo article 55 paragraph 1 to (1) Criminal Law Code or article 338 Criminal Law Code Jo article 53 paragraph (1) Criminal Law Code or article 346 Criminal Law Code.<sup>5</sup>

However, in article 110 of the criminal procedure law that the process of handling cases has the provisions of the day in the investigation process, namely: (1) If the investigator has completed the investigation, the investigator must immediately submit the case file to the public prosecutor. (2) If the public prosecutor argues that the results of the investigation are still incomplete, the public prosecutor immediately returns the case file to the investigator with instructions to be completed. (3) If the public prosecutor returns the results of the investigation to be completed, the investigator must immediately conduct additional investigations by the instructions of the public prosecutor. (4) The investigation is considered to have been completed if within fourteen days the public prosecutor does not return the results of the investigation or if before the deadline expires there has been a notification about it from the public prosecutor to the investigator. In the case of abortion crimes in the city of Gorontalo according to prospective researchers not based on this SOP so that the legal challenge appears.

This investigation is intended to see and find out how the legal protection of the rights of suspected abortion crimes in the city of Gorontalo.

## 2. Problem Statment

Based on the description of the issues discussed above, the problem that will be answered is: How to Protect the Rights of Abortion Suspects in the City of Gorontalo?

## 3. Research Methods

This type of research is empirical which in other words is field research, which is to examine the provisions of applicable law and what happens in reality in society.<sup>6</sup> Or in other words, a study conducted on the actual circumstances or real circumstances that

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<sup>4</sup> Wawancara, 13 februari 2021

<sup>5</sup> <https://polresgorontalo.com/sepasang-kekasih-pelaku-aborsi-resmi-ditahan/> accessed november 3 2021

<sup>6</sup> Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, (Jakarta, Sinar Grafika, 2002), h.15

occur in society to know and find the facts and data needed. The data source used is primary data consisting of interview results and observations and documentation. While the secondary data used in various research results such as relevant scientific articles to be used as secondary material.

#### **4. Discussion**

##### **4.1 Efforts to Protect the Rights of Suspects of Abortion**

The Criminal Procedure Code clearly and unequivocally regulates matters relating to the rights of suspects and each party is obliged to respect the rights of such suspects. As for the rights of suspects stipulated in the Criminal Procedure Law As follows:

1. Priority Rights of Settlement
2. Right to Prepare for Defense
3. Right to Testify Freely
4. Right to Get an Interpreter
5. The Right to Choose Your Advisor
6. Right to Free Legal Aid
7. Right to Contact Legal Counsel
8. Right to Visit by a Personal Doctor
9. The Right to Be Notified, Contact, or Receive Visits of Family and relatives.
10. Right to Receive a Spiritual Visit
11. Right to Submit Witnesses
12. The Right Not to Be Burdened with Evidentiary Obligations

Related to the formulation of the issue regarding the protection of suspect rights, in this case, the researcher focuses on the protection of suspects' rights in terms of obtaining priority rights of settlement and social rights.

##### **4.2 Protection of Suspects' Rights to The Proritas of Case Settlement**

This has been affirmed in Article 50 of the Criminal Procedure Law which reads:

1. The suspect is entitled to immediately get an examination by the investigator can then be submitted to the Public Prosecutor.
2. The suspect is entitled to his case immediately forwarded to the Court by the Public Prosecutor.
3. The accused has the right to be tried immediately by the Court.

It can be concluded that the article wants the process of resolving cases to be handled quickly so that everything can be completed in a short time. However, in cases raised by researchers, the right to protect suspects against the priority of settlement of cases does not work by the provisions that have been arranged. The reason is that researchers found that the fact on the ground of this case stagnated for 1 (one) year and until now the case is still running.

Researchers have even conducted interviews on:

Gorontalo City Police Investigator:

"Investigators explained that the abortion case occurred precisely in Buladu Subdistrict, and this kasus has been revealed by the police on January 18, 2020."

"Gorontalo City Police Investigator explained that after conducting a marathon examination of witnesses and collecting evidence. The police got sufficient preliminary evidence that both had abortions."

"This couple deliberately wants to abort the womb for fear of being caught by their parents and the perpetrator contacted the child shaman. Furthermore, consciously the two perpetrators asked the child shaman to abort the womb. that a couple who had an abortion is still recorded as a student at one of the Universities in the city of Gorontalo.

"This abortion case came to light when ari-ari could not be removed then the midwife kampong advised the perpetrator to take his lover to the hospital, and in one of these hospitals, it was revealed that the perpetrator had just had an abortion at the agreement of himself and his girlfriend. The police confirmed that until now this case is still away."<sup>7</sup>

Camat Duingi:

Camat Duingi explained that the case took place in Duingi Subdistrict, after hearing reports from residents, and the case had been handed over to the authorities. This incident has had a huge impact on society.

Therefore, the Duingia District will do counseling about the right sex. If you look back, why many teenagers abort, because they have free sex, that it is necessary to have religious education so that their morals are high and aware that free sex is not religiously appropriate and dangerous. If you don't want to get pregnant, use the safest contraceptive and the safest contraceptive is not to have sex at all. Everything has its risks. For that before acting, one should start thinking later how instead of how later.<sup>8</sup>

Suspect:

A lover with the initials DRO (disguised name) aged 22 years and MNS aged 22 years (name disguised) who is one of the public college students in the city of Gorontalo, is determined to be a suspect in the abortion of DRO who knew his girlfriend was pregnant and ashamed of his parents. DRO during a case title in Gorontalo City Police said that "I know my girlfriend is 8 months pregnant, she is afraid and ashamed of her parents". Therefore, DRO is asked by MNS to find a way so that the

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<sup>7</sup> Wawancara penyidik Polres Gorontalo Kota

<sup>8</sup> Wawancara Camat Duingi

deeds that have been done are not known by their parents. To cover it up, MNS never returned to his parents' house and often locked himself in kos.<sup>9</sup>

#### Public Figures:

Community leaders, justifying and very surprised by the abortion case that occurred in Duingi Subdistrict, moreover the community was surprised to hear the news that the child shaman who helped the reprimand process had repeatedly committed acts that were strictly prohibited by law and religion. In this case, there needs to be prevention of abortion that is increasingly prevalent, among others:

- a. Provide sex education among the young. This is because there are still many of our adolescents who study reproductive function at the point of "enjoyment" alone without meeting the negative effects in the future. So the hope is that with the right and complete understanding, then the teenager will be able to make the right decision to maintain their sanctification.
- b. Re-instilling social and religious moral values will be important and noble to maintain self-respect. Mostly, these young people because have been discouraged by norms that govern relationships between men and women while the media incessantly promotes impressions that smell of sexuality by prioritizing lust alone. Plus access to pornography can be obtained through the internet via computer or mobile phone.
- c. Re-strengthen social control in society. It is undeniable that making teenagers free to do anything is because of the weakening of social control from the family environment and society. Let's say several "courtship" perpetrators are allowed by their parents both in the room. Although there is no adultery there, it can trigger "more" actions to be done on other occasions and other places. Likewise, the control of the community is important when looking at young couples who sleep in Kosten's rooms and even for days. There are already certain goods that can further encourage the occurrence of behavioral deviations in the sense of doing actions that should only be done by an official married couple.
- d. The perpetrators who have had abortions also cannot be underestimated. They have the right to help us because it could be that they have done it is an error that they do not want to repeat. So we can help by providing counseling services and social support to be able to bounce back to live a normal life with the real self-repentance (nasukha repentance).<sup>10</sup>

#### The suspect's family:

The suspect's family began to learn about the case starting from the party who confirmed to them that their child had had an abortion. This was revealed when the hospital began to suspect, the suspect admitted to the hospital that they had married revealed that the perpetrator had just had an abortion at the agreement of himself

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<sup>9</sup>Wawancara, Tersangka

<sup>10</sup> Interview, Public Figures

and his girlfriend. The family deeply regrets this incident. They did not know that their child was pregnant because during the pregnancy process she never came home because of shame and fear of being found out by her parents. Now they have been married and the family hopes law enforcement can consider the suspect because the aborted child did not die they had to provide for him. In addition, the suspect is a final-level student at one of Gorontalo State universities, therefore must be considered to complete his studies.<sup>11</sup>

### 4.3 Protection of Suspects' Rights to Social and Cultural Rights

The human right of the social field is a human right related to the right to social care, the right to housing, and the right to education. The Amendment to the 1945 Constitution specified:

Article 28H paragraph (3) of the Amendment of the 1945 Constitution states: "Everyone is entitled to a social provision that enables the development of himself as a whole as a human being.

Article 28C amendments to the 1945 Constitution state that: "Everyone has the right to develop themselves through the fulfillment of their basic needs, entitled to education and benefit from knowledge and technology, art and culture, to improve the quality of their lives and for the welfare of humanity. However, based on the facts on the ground the suspect experienced discrimination from the community and was ostracized in the neighborhood where the suspect lived.

According to the results of the interview with Camat Dungingi:

-Camat Dungingi explained that the public does not need to discount suspected abortionists, just take lessons from the abortion cases that are rife lately. He also urged the public to pay more attention to their teenage children and exercise supervision and control in this case to provide more religious education, extramarital sex, and education. "I as the Dungingi District Camat sometime in the future will carry out socialization to the community about the dangers of abortion and will conduct assistance and counseling to all teenagers in the Dungingi subdistrict and cooperate with the village so that this abortion problem is resolved and will not happen again in Dungingi District".

After the researchers conducted field observations the researchers also found the fact that the suspect was a final-level active student at one of Gorontalo State universities, so it can be concluded that the suspect is entitled to his social rights, in this case, completing education and benefiting from knowledge and technology, art and culture, to improve the quality of his life.

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<sup>11</sup> Wawancara, keluarga tersangka

## 5. Conclusion

It can be concluded that this case prioritizes the protection of suspect rights based on the provisions that have been outlined by the researcher. However, in this case, the suspect did not get his rights as stipulated in Article 50 of the Criminal Procedure Law, and contrary to Article 110 of the Criminal Procedure Law that the process of handling cases has a provision of day in the investigation process. The evidence that this case has been stalled for almost 2 (two) years and until now did not get clear legal certainty. In addition, the suspect did not make any effort because maybe the suspect did not know that he had the right to make legal efforts by the provisions of the law.

## 6. Recommendations

The police actively conduct raids in places such as hotels, massage parlors, boarding houses, and other places that can be used to perform extramarital relations and in addition, the police in the efforts to resolve related to the problem of abortion must be more thorough in investigating suspected abortion crimes to get rights, in terms of legal certainty, justice, and protection.

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