



Analysis of Lack of Basis for Judge Considerations in Cases of Abortion by Teenagers

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Abstract: The purpose of this writing is to analyze what the judges consider about the crime of abortion (Decision Study Number: 90/Pid.Sus/2021/PN/Gto). The writing method used is Normative writing, using 2 approaches namely; law (statute approach) and a case approach (case approach). The results of this writing show; In decision Number: 90/Pid.Sus/2021/PN/Gto. Judges are not based on strong juridical considerations by applying the principle of *lex specialist derogate legi general* and the principle of *lex posterior derogate legi priori*,

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1. Introduction

Abortion comes from the Latin, namely *provocateurs abortion*, which is absorbed into English, namely *abortion*, which means to abort the womb to end the pregnancy. In terminology, the word *abortion* or often referred to as *abortion* is the expulsion of the products of good urethral conception prematurely where the age of the fetus is unable to grow outside the womb at 24 weeks of fetal age. Medically, it is the removal of the womb which is done before the age of the fetus is 24 weeks old. And that can cause death, then if the fetus is removed after 24 weeks of age it can cause death, then it is called *infanticide*.¹ Abortion or commonly called *abortion* can generally be classified as an act of criminal act of murder that is truly inhumane and can violate the rules of legal norms.

The positive laws regarding abortion contained in Indonesia in statutory regulations starting from the Criminal Code (KUHP) articles 299, 346, 347, 348, and 349 are also regulated in Law Number 36 of 2009 concerning Health articles 75, 76, 77. and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in articles 45A and article 77A.²

As an example of the case that occurred in Gorontalo in decision Number: 90/Pid.Sus/2021/PN/Gto. Where the defendant Yusran Mahmud Alias Viko gender: Female (hereinafter referred to as the defendant YM) was indicted by public prosecutors as the perpetrator of the crime of abortion with an alternative form of indictment, alternative indictment according to Adam Chazawi "is an indictment alleging two or more criminal acts that are alternative in nature mutual exclusion from one another".³The first indictment is Article 194 in conjunction with Article 75 paragraph (2) letter a, letter b of the Republic of Indonesia Law Number 36 of 2009 Concerning Health in conjunction with Article 55 paragraph (1) 1st of the Criminal Code which reads:

1. Article 75 of the Health Act

1. Everyone/anyone is prohibited from having an abortion
2. The prohibition as referred to in paragraph (1) may be excluded based on:

¹ Ida Bagus Made Putra Manohara, "Penerapan Sanksi Pidana Bagi Pelaku Tindak Pidana Aborsi Menurut Peraturan Perundang-Undangan Yang Berlaku (Kitab Hukum Pidana Dan Undang-Undang Nomor. 36 Tahun 2009 Tentang Kesehatan)," *Jurnal Hukum Volkgeist* 3, No. 1 (2018): 2-14, <https://Media.Neliti.Com/Media/Publications/276852-Penerapan-Sanksi-Pidana-Bagi-Pelaku-Tind-1ca3b92a.Pdf>.

² Pasal Kitab Dan Undang-Undang Hukum Pidana, "Aborsi Dalam Penerapan Hukum Pidana Di Indonesia," *Lex Crimen* 8, No. 6 (2019).

³ Fence M. Wantu, *Hukum Acara Pidana Dalam Teori Dan Praktek* (Yogyakarta: Reviva Cendekia, 2011).

- a) Indications of a medical emergency that can be detected at an early age in pregnancy, even if it threatens the life of a mother and the fetus in her womb, and has a severe genetic disease or is called a congenital defect, or cannot be repaired so that it will make it difficult for the baby to live outside content;
- b) Pregnancy that occurs as a result of rape results in psychological trauma for victims of rape.

2. Article 194 Health Act

Anyone who intentionally has an abortion not in accordance with the provisions referred to in Article 75 paragraph (2) shall be subject to imprisonment for a maximum of 10 (ten) years and a fine of up to Rp. 1,000,000,000.00 (one billion rupiah).⁴

Then an abortion act can be said to be a legal action that must also pay attention to the provisions of article 75 paragraph (3) of the Health Act which explains: "Action, as referred to in paragraph (2), can only be carried out after going through pre-action counseling and/or counseling and ends with post-action counseling carried out by an authorized and competent counselor.

Still, in the first indictment, the public prosecutor linked it to Article 55 paragraph (1) 1 of the Criminal Code which reads: "Convicted as perpetrators of a crime: 1. Those who committed it, ordered it to do it, and who took part in it. According to the panel of judges, the first indictment as mentioned above was not met. and the second indictment is Article 338 of the Criminal Code in conjunction with article 53 paragraph (1) 1st of the Criminal Code which reads:

1. Article 338 of the Criminal Code:

Whoever deliberately takes the life of another person, can be punished for murder by imprisonment for a maximum of fifteen years.⁵ Then it is connected with article 53 paragraph (1) 1st of the Criminal Code.

2. Article 53 paragraph (1) 1st of the Criminal Code:

Trying to be able to commit a crime can be punished, if you have that intention, it has been evident from the initiation, and the inability to complete the execution, not solely caused by the will itself.⁶

⁴ Agustina Tina, Joelman Subaidi, And Umami Kalsum, "Aborsi Dalam Perspektif Undang-Undang Kesehatan Dan Kuhp," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 2, No. 3 (2021), <https://doi.org/10.29103/jimfh.v4i2.4076>.

⁵ Pasal 338 KUHP Tentang Pembunuhan.

⁶ Pasal 53 Ayat (1) Ke-1 KUHP Tentang Percobaan Melakukan Kejahatan.

As for the indictment of the two public prosecutors as above according to the panel of judges, it was not fulfilled. and the third indictment is Article 346 of the Criminal Code which reads:

1. Article 346 of the Criminal Code

A woman who deliberately aborts or kills her womb or orders another person to do so, shall be punished by a maximum imprisonment of four years.⁷

In the third indictment the public prosecutor this time according to the panel of judges has been fulfilled. Furthermore, the prosecutor's demands are imprisonment for 1 (one) month and 15 (fifteen) days in prison then the judge applies Article 346 of the Criminal Code with a maximum prison sentence of four years with the judge's sentence against the defendant YM, namely 1 (one) month and six (6) prison day.⁸

According to the author, the judge's consideration of the application of the law in imposing criminal sanctions imposed by the judge on the defendant YM in decision number: 90/Pid.Sus/2021/PN/Gto was not quite right. The author's first argument is that if it is associated with two related legal principles and can be used as a basis by judges in deciding cases as mentioned above, namely: *Lex posteriori derogate priori* (new legal provisions set aside the old ones) and *Lex Specialist Derogat Legi Generale* (legal provisions that specifically overrides the general one), then the Health Law should be the main consideration regarding the act or act of abortion based on the principle of *Lex specialis derogate legi generalis* as contained in the provisions of Article 63 paragraph (2) of the Criminal Code which explains:

"If there is an act that is included in the general criminal rules, then it is also regulated in the special criminal rules, then only those special ones can be applied".⁹

The purpose of the Health Law is to be able to increase awareness, ability, and willingness of everyone to be able to adopt a healthy lifestyle in order to realize the degree of public health for investment in development planning regarding more productive human resources both economically and socially. . The crime of abortion is contrary to the objectives of the Health Act. So that the criminal provisions regarding abortion in the Health law in the article mentioned above are considered good because they contain general prevention as well as specific prevention in order to reduce the crime rate of abortion, in legal science this is often referred to as special prevention,¹⁰

Then the author's second argument is that in the decision, namely: the decision of the toli-toli district court Number: 04/Pid.Sus/2015/PN.TLI where the defendant was

⁷ "Pasal 346 KUHP Tentang Kejahatan Terhadap Nyawa".

⁸ "Putusan Nomor: 90/Pid.Sus/2021/PN/Gto." (Pengadilan Negeri Gorontalo, 2021).

⁹ Damang Dan Apriyanto Nusa, *Asas Dan Dasar-Dasar Ilmu Hukum* (Yogyakarta: Genta, 2017).

¹⁰ Usman, "Analisis Perkembangan Teori Hukum Pidana," *Jurnal Ilmu Hukum* 4, No. 1 (2020): 62-78.

named Humaira Alias Mia, female sex was charged by the public prosecutor in the same case namely regarding the crime of abortion using alternative charges. With the first indictment of article 194 of Law Number 36 of 2009 concerning Health Jo. Article 56 2 of the Criminal Code, the second indictment is Article 80 Paragraph (3) of Law Number 23 of 2002 concerning Child Protection Jo. Article 56 2 of the Criminal Code, and the third indictment is Article 346 of the Criminal Code Jo. Article 56 to 2 of the Criminal Code. Then the judge applied Article 194 of Law Number 36 of 2009 concerning Health in the first charge against the defendant with the judge's sentence of 2 (two) years in prison. At this point, the judge in his decision regarding the crime of abortion mentioned above does not seem to have a strong legal basis for consideration in imposing sanctions on the defendant. The definition of "juridical considerations are the considerations of judges who view the law as a complete system which includes legal principles, legal norms, and legal rules".¹¹Based on the 2 authors' arguments above, the author is interested in studying the Judge's Considerations for Abortion Crime Actors (Decision Study Number: 90/Pid.Sus/2021/PN/Gto).

2. Method

This type of writing is normative writing, using a statutory approach and a case approach. This writing uses data analysis techniques with deductive logic, deductive logic or legal material processing in a deductive manner, namely explaining a general matter and then drawing it into a more specific conclusion.

3. Analysis And Discussion

Analysis of Lack of Basis for Judge Considerations in Cases of Abortion by Teenagers

The consideration of the panel of judges is based on legal facts in the trial.

1). Judge's Consideration

Considering, that based on the facts revealed in the trial, it was evident that on Saturday 18 January 2020 around 14.00 WITA at the house of the witness SAIDA UNTINGO Alias TA EDON Alias TANTE EDON which is on Jln. Cut Nyak Dien Kel Heledulaa Utara Kec Kota Timur Kota Gorontalo The Defendant and Witness Julius Rizki Haris, who at that time was the Defendant's girlfriend, wanted to abort the

¹¹ Kiprah Mandiri B Side, "Tinjauan Pertimbangan Hukum Hakim Dalam Menjatuhkan Putusan Pidana Bersyarat : Studi Kasus Putusan Nomor 99/Pid.B/2011/PN.Pare-Pare," *Tinjauan Pertimbangan Hukum Hakim Dalam Menjatuhkan Putusan Pidana Bersyarat : Studi Kasus Put Usan Nomor 99/Pid.B/2011/PN.Pare-Pareusan Nomor 99/Pid.B/2011/PN.Pare-Pare*, 2014, 111.

defendant's pregnancy with the help of the witness SAIDA UNTINGO Alias TA EDON Alias TANTE EDON at a cost of Rp. 4,000,000.00 (four million rupiah);¹²

Considering, that the process of aborting the baby in the defendant's womb was carried out by the witness SAIDA UNTINGO by way of drinking 1 (one) pill of MISOPROSTOL brand and 2 (two) pills inserted into the vagina and lying on his left side for 5 (five) hours while waiting for the reaction from the drug the;¹³

Considering, that at 13.30 WITA the Defendant complained of pain in the stomach and asked the witness JULIUS RIZKI HARIS to call witness SAIDA UNTINGO, then witness SAIDA UNTINGO took action to deliver the baby because the Defendant's waters had ruptured, not long after the defendant gave birth to a baby girl, but the placenta from the defendant was left behind, then the witness SAIDA UNTINGO was still trying to remove the placenta that was left behind but the umbilical cord broke and the witness SAIDA UNTINGO asked the witness JULIUS RIZKI HARIS to take the defendant to Siti Khadijah Hospital;¹⁴

Considering, that the defendant immediately underwent medical action by means of curing by Expert dr. Elson to safety;

Considering, that from the facts that have been described above it is clear that the act of the defendant who wanted to abort his womb by non-medical action by the witness SAIDA UNTINGO by inserting it into the vagina and taking the drug MISOPROSTOL which according to the expert has side effects for uterine contractions which result in miscarriage and abortion.¹⁵

Considering, that the fact that the child that the defendant and witness JULIUS RIZKI HARIS wanted to abort was still alive and safe to this day, in the panel's opinion, this does not erase that the crime had been completed.

Considering, that during the trial, the panel of judges did not find things that could eliminate criminal responsibility, both as reasons for justification and/or excuses, the defendant must be held accountable for his actions;

Considering, that because the defendant is capable of being responsible, he must be found guilty and sentenced to a sentence;

¹² "Putusan Nomor: 90/Pid.Sus/2021/PN/Gto."

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

Considering, that because the defendant is detained, the period of arrest and detention that has been served is fully reduced by the prison sentence imposed, and determines that the defendant remains in custody;

Considering, that in imposing a sentence against the defendant, it is necessary to first consider the aggravating and mitigating circumstances of the defendant;

Aggravating circumstances:

- 1) The defendant's actions disturbed the community;

Mitigating circumstances:

- 1) The defendant acknowledged his actions, regretted it and promised not to repeat it again;
- 2) The defendant was married to the witness JULIUS RIZKI HARIS and took care of the baby who was about to abort;
- 3) The accused is still in college;

Considering, that because the defendant was sentenced to a crime, he must also be burdened with paying court fees. Considering, that based on the facts revealed in the trial that in accordance with the provisions of Article 184 paragraph (1) of the Criminal Procedure Code regarding legal evidence, that in the trial the public prosecutor presented several witnesses and from the statements of the witnesses confirmed the criminal act committed by the defendant and the defendant also admitted his actions, then the evidence has been fulfilled to impose a sentence on the defendant.

2). Decision

Declare that the Defendant Yusran Mahmud Alias Viko has been proven legally and convincingly guilty of committing the crime of "intentionally ordering another person to cause the death or death of the child he is carrying" as the third alternative indictment of the Public Prosecutor; Sentenced punishment on the defendant with imprisonment for 1 (one) month and 6 (six) days; Determine that the period of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed; Charge court fees to the Defendant in the amount of Rp. 5,000 (five thousand rupiahs);¹⁶

3). Author Analysis

Judging from the legal facts that were taken into consideration by the judge, namely: that the defendant deliberately wanted to abort his womb through unlawful means, even though during the process of aborting the child he wanted to abort alive, and that

¹⁶ Ibid.

the defendant and his girlfriend were also married, it was not removed criminal responsibility from the defendant so that the judge based on this consideration chooses the Criminal Code article 346 in the application of sanctions. Based on these considerations, the authors analyze that the judge's considerations are not based on strong juridical, philosophical, and sociological considerations.

In terms of juridical considerations, the author analyzes that judges do not base their considerations on legal principles where the legal principle of *lex specialist derogate legi general* is set aside, even though it is clear in Article 63 paragraph (2) of the Criminal Code in applying sanctions to concrete cases a law that is more specifically regulates the act of abortion.¹⁷ Regarding the act of the defendant committing the crime of abortion, this is also regulated in Article 194 of Law number 36 of 2009 concerning Health, then connected or *Junto* article 55 of the Criminal Code according to the first indictment of the prosecutor, all elements of the defendant's actions were fulfilled based on legal facts and instruments. the evidence at trial. Article 194 reads:

"Any person who intentionally has an abortion not in accordance with the provisions referred to in Article 75 paragraph (2) shall be punished with imprisonment for a maximum of 10 (ten) years and a fine of up to Rp. 1,000,000.00 (one billion rupiah)".

- The elements of each person, such as the position of the case mentioned above, the element of each person is the defendant YUSRAN MAHMUD Alias VIKO, then this element is fulfilled
- The element of intentionally having an abortion is not in accordance with the provisions referred to in Article 75 paragraph 2. In this element, if connected with Article 55 paragraph (1) 1st of the Criminal Code which reads:

(1). Sentenced as a perpetrator of a crime:

1. those who do, those who order to do, and participate in doing.

So the defendant YUSRAN MAHMUD Alias VIKO in the case above was fulfilled in the element of order to do so that he was called the perpetrator of the crime. Then the element of deliberately having an abortion not in accordance with the provisions referred to in Article 75 paragraph 2 is fulfilled.

The legal fact that the child who is about to be aborted is safe and the defendant is also married, the author analyzes that this fact is included in mitigating circumstances for the defendant and the writer agrees with the judge, but on the one hand applying Article 346 of the Criminal Code against the defendant based on the legal facts above

¹⁷ Shinta Agustina, "Implementasi Asas *Lex Specialis Derogat Legi Generali* Dalam Sistem Peradilan Pidana," *Masalah-Masalah Hukum* 44, No. 4 (2015): 503, <https://doi.org/10.14710/Mmh.44.4.2015.503-510>.

is not appropriate because the criminal penalty in the Criminal Code is a maximum of 4 years in prison, which is light, coupled with the relatively mild judge's decision, namely 1 month and 15 days in prison. Of course, the demands and decisions of the judges are based on the judgment that the crime of abortion has become commonplace and it is appropriate to act on it by applying Article 346 of the Criminal Code, which carries relatively low threats.¹⁸ Of course, the application of this article is not optimal enough to put pressure on the public and the perpetrators themselves not to commit abortion crimes when compared to implementing the Health law, the Health law contains general prevention aimed at preventing people from having abortions, namely with criminal threats and fines. large and also contains special prevention so that the perpetrators of crimes do not repeat their actions.

Furthermore, it is related to the philosophical considerations of the judges, where these considerations relate to the philosophical basis of the law used in the application of sanctions related to the criminal act of abortion.¹⁹The author analyzes that philosophically law number 36 of 2009 concerning Health was born to realize the degree of public health as a form of resistance to health problems which will later cause huge economic losses for every individual and even the country. Regarding the act of abortion, this is a form of health disorder that the Health Law seeks to eliminate which is then regulated in Article 194 in conjunction with Article 75 paragraphs 1 and 2, and this law is also in accordance with the community's need for laws that are able to change lifestyles Public. In this philosophical consideration, the judge chose the Criminal Code which is a very old law and it is difficult to reach the public's legal needs for health. Criminal law (KUHP) is expected to be able to fulfill the ideals of public order,²⁰ This analysis is in line with the adage; "Het Rech Hint Achter De Feiten Aan --- the law teeters behind reality". This adage implies the enactment of a newer law that is more complex in regulating an act, in this case, abortion.²¹ So the new law or new provisions are the answer to increasingly complex and dynamic social relations so that the law will continue to hold on to its certainty value.

Furthermore, it is related to sociological considerations which are considerations that illustrate that regulations are formed to meet the legal needs of society in various aspects and are in accordance with empirical facts regarding the development of

¹⁸ Humas: Polres Gorontalo Kota, "Sepasang Kekasih Pelaku Aborsi Resmi Ditahan," 2022, Accessed 04 Januari <https://Polresgorontalokota.Com/Sepasang-Kekasih-Pelaku-Aborsi-Resmi-Ditahan/>.

¹⁹ Keifer Geffenberger F, "Tinjauan Umum Tentang Pertimbangan Hakim," *Angewandte Chemie International Edition*, 6(11), 951-952., 1967, 19-67.

²⁰ Aniza Lakoro, Lisnawaty W Badu, And Nuvazria Achir, "Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online 'Weak Polices In Handling Criminal Actions Online Togel Gaming,'" *Jurnal Legalitas*, 2020.

²¹ Satjipo Raharjo, "Reformasi Menuju Hukum Progresif," *Unisia* 27, no. 53 (2004): 238-41, <https://doi.org/10.20885/unisia.vol27.iss53.art3>.

problems that exist in society.²² Based on these considerations, the authors analyze that based on legal facts, the defendant had an abortion as a result of embarrassment arising from sexual relations outside of marriage which caused the defendant to become pregnant so that he had an abortion, this is a legal fact in court and also a social fact where at this time people can easily it's easy to have sex outside of marriage and have an abortion.

Today's social facts have illustrated a shift in moral values, especially in Gorontalo, moreover Gorontalo is known for its philosophy, namely "Adati hula-hula to saraa, saraa hula-hula to Kur'ani" which is defined as "adat with syrak, sharak with the Book of Allah ". This context then becomes the frame of the characteristics of the Gorontalo Islamic tradition²³, so that at this point the law must be able to change and restore the pattern of people's life in accordance with the ideals of law, namely maintaining order. In addition, legal awareness as the fruit of a legal culture can lead to a person's belief that obeying the law is not only because of fear of being penalized but based on the belief that if he violates the law, he will feel a violation of the rights of other human beings.²⁴ This goal is in line with the goal of law number 36 of 2009 concerning Health to improve a healthy lifestyle as an investment for the future. And these things are not considered by the judge.

Legal considerations in upholding the law by judges in their decisions must contain three (3) elements of legal ideals that must exist proportionally, namely: legal certainty, justice and expediency. The ideals of the law are one unit, cannot be separated one by one, all three must be endeavored in every rule of law and also considered in law enforcement by the judge in his decision.²⁵

Certainty is the first legal ideal "according to Suseno certainty is defined as clarity of norms, so that it can be used as a guideline for the people who are subject to the rule"²⁶. Related to Suseno's opinion on the crime of abortion above, the author analyzes that in the Criminal Code abortion is not justified for any reason as implied in articles 346, 347, 348 and 349 of course the provisions in the Criminal Code are no longer in accordance with legal requirements in a society where Currently, many women, doctors and midwives perform abortions on the basis of saving the lives of mothers,

²² Nafi' Mubarok, "Penemuan Hukum Sebagai Pertimbangan Sosiologis Hakim Agama Dalam Menerapkan Hukum," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 17, No. 2 (2014): 369-402.

²³ Nafi' Mubarok, "Penemuan Hukum Sebagai Pertimbangan Sosiologis Hakim Agama Dalam Menerapkan Hukum," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 17, No. 2 (2014): 369-402.

²⁴ Novia Rahmawati A Paruki And Ahmad Ahmad, "Efektivitas Penegakan Hukum Tambang Ilegal," *Batulis Civil Law Review* 3, No. 2 (2022): 177, <https://doi.org/10.47268/Ballrev.V3i2.966>.

²⁵ Failin Alin, "Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia," *JCH (Jurnal Cendekia Hukum)* 3, No. 1 (2017): 14, <https://doi.org/10.33760/Jch.V3i1.6>.

²⁶ B Wibowo Suliantoro, "Dinamika Arah Kepastian Hukum Di Tengah Transformasi Sosial-Budaya Dalam Perspektif Pemikiran Mazhab Sociological Jurisprudence," *Jurnal Filsafat* 17, No. 1 (2017): 15-31.

babies or victims of rape. Acts like this are not regulated in the Criminal Code so that at this point the law loses the clarity of its norms, so to regulate it the law creates law number 36 of 2009 concerning Health which regulates in a complex and comprehensive manner related to the criminal act of abortion to restore clarity to the norm.

the author concludes that certainty must apply firmly and clearly in society, upholding norms and legal rules in every life of society can bring a sense of comfort in the form of protection and guidance for members of the community, on the other hand law is also present as a result of suffering for someone who receives sanctions for violation of certain rules or legal norms.²⁷So for that related to the crime of abortion as mentioned above the Criminal Code has implied and ordered in Article 63 paragraph (2) regarding the enforcement of more specific provisions namely law number 36 of 2009 concerning Health which should be applied in the abortion crime above, as a form of response to firm and clear certainty.

So the new law or new provisions are the answer to increasingly complex and dynamic social relations (a reality), so that the law will continue to hold on to its certainty value. The above statement is in accordance with the principle of *lex posteriori derogate legi priori* (new legal provisions overrule the old).²⁸related to the crime of abortion above, the new law that must be applied in imposing criminal sanctions is law number 36 of 2009 concerning Health, and overrides the old Criminal Code.

At this point the judge in his decision regarding the crime of abortion mentioned above does not seem to have a strong legal basis for consideration in imposing sanctions on the defendant. As the definition of "juridical considerations are the considerations of judges who view law as a complete system which includes legal principles, legal norms and legal rules". The judge in his decision above did not pay attention to the principle of *lex specialist derogate legi generali* and the principle of *lex posteriori derogate legi priori*, in order to guarantee the creation of legal certainty.²⁹

Certainty is a characteristic that cannot be separated from law, law without certainty value will lose meaning because it can no longer be used as a guideline for behavior for everyone. Community order is closely related to legal certainty, because order is the essence of certainty itself. Thus the judge's decision in the abortion criminal case above does not reflect legal certainty.

The ideals of the law of benefit, related to the ideals of the law of benefit, there is a saying that has often been quoted and put forward in various literature, namely the

²⁷ Ruly Lamusu, Dian Ekawaty Ismail, And Lusiana M Tijow, "Model Penegakan Hukum Terhadap Tindak Pidana Korupsi Dana Desa," *Philosophia Law Review* 1, No. 1 (2021): 22–38.

²⁸ N Irfani, "Lex Superior, Lex Specialis," 2020, 305–25.

²⁹ Fance. W. Wantu, "Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata," *Mimbar Hukum* 25, no. 2 (2013): 205–18.

saying expressed by Jeremy Bentham, namely; "The law desires to guarantee the greatest happiness to the greatest number of people." "The ideals of law in the context of expediency give priority to the public interest (society) rather than personal interests. The intent of this can be observed in the priority with the 'biggest human being', meaning that the public interest or the interests of the many people must take precedence."³⁰

The author analyzes that in the judge's decision regarding the crime of abortion mentioned above the judge included aggravating circumstances from the defendant's actions in his considerations, namely regarding the defendant's actions which disturbed the community. Against the defendant's actions there was a desire for many people to be harmed as set forth in law number 39 of 1999 concerning human rights in Article 9 paragraph (2) and (3) which reads: (2). Everyone has the right to be peaceful, safe, peaceful, happy, prosperous, physically and mentally. (3). Everyone has the right to a good and healthy environment. In considering his decision, the judge did not take into account the needs of the people for a good and healthy environment. Of course, the criminal act of abortion is something that is not good according to religious norms,³¹.

in taking action against the perpetrators of the criminal act of abortion as mentioned above, special treatment is needed by using a more specific law, in this case the Health law. Because today's social facts are very concerning where people can easily have sexual relations outside of marriage which in the end leads to the crime of abortion. The shift in values that live in society is very visible, so in the context of legal ideals, legal benefits must be able to become a tool in changing people's behavior to create peace, security and also happiness through the application of laws that specifically regulate the crime of abortion.

The legal ideals of justice According to Aristotle, what is meant by justice is then divided into two: but regarding the crime of abortion, only one is the focus of the discussion, namely

- a. Distributive justice is giving to each party according to his actions³².

If it is related to the crime of abortion above, the focus of the discussion is distributive justice where the judge must give a sentence according to the actions of the defendant.

³⁰ Endang Pratiwi, Theo Negoro, and Hassanain Haykal, "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?," *Jurnal Konstitusi* 19, no. 2 (2022): 269–93.

³¹ Sutrisno, Puluhaulawa Fenty, and Lusiana Margaereth Tijow, "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi," *Gorontalo Law Review* 3, no. 2 (2020): 168–87.

³² Muchamad Safa'at, "Pemikiran Keadilan (Plato, Aristoteles, John Rawls)," *Institute of Economic Science Kediri*, no. November (2002): 1–13, http://repository.unp.ac.id/822/1/FARIDAH_437_96.pdf.

In line with that, quoting as said by Suwitno Yutye Imran that Justice serves as a guideline to distinguish between just and unjust actions, elements of the aspect of justice can be contained in the substance³³. So Related to the decision above, the judge pays little attention to the applicability of the principle so that the basis for juridical considerations as explained above from the judge becomes weak, then explicitly the judge's decision in the crime of abortion does not reflect the values of justice because the judge based his judgment on a strong juridical basis.

Referring to Aristotle's theory of distributive justice above, the judge's consideration in imposing a decision on the accused still cannot be achieved in accordance with the actions committed by the accused in his decision because in the application of the wrong article and also crashing into legal principles if based on the results of the author's analysis

The author sees that substantially the judge is not based on the principle of giving sanctions using article 346 of the Criminal Code, because if we refer to Article 194 of Law number 36 of 2009 concerning Health then it is linked or Junto article 55 of the Criminal Code then all the elements of the defendant's actions fulfilled.³⁴

The author analyzes that the judges do not consider the basis of the application of the law, namely the principle of *lex specialist derogate legi generali*. So the author emphatically states that the judge in his decision was substantially not based on legal principles in imposing sanctions on the defendant YUSRAN MAHMUD Alias VIKO. As for the fact that the defendant is married and taking care of the baby who is about to abort, this cannot be used as an excuse to erase the guilt or criminal responsibility against him, because the law looks not at the person but at the actions he has committed.

4. Conclusion

Based on the results of the analysis and discussion that have been described above, it can be concluded that in the decision Number: 90/Pid.Sus/2021/PN/Gto. The judge's consideration is not based on strong juridical, philosophical and sociological considerations, where the judge pays little attention to the principle of *lex specialist derogate legi generali*. Judges pay little attention to the philosophical basis of law number 36 of 2009 concerning Health as a guide or guideline in applying laws to impose sanctions on defendants, and judges do not consider the sociological basis regarding the legal needs of society as a result of shifting moral values.

³³ Suwitno Yutye Imran, "The Urgency of Regulation of the Ultra Judicial Principle in Criminal Judgments," *Jambura Law Review* 3, no. 2 (2021): 395–410, <https://doi.org/10.33756/jlr.v3i2.11154>.

³⁴ Suwitno Yutye Imran, "The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments," *Jambura Law Review* 3, no. 2 (2021): 395–410, <https://doi.org/10.33756/jlr.v3i2.11154>.

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