
**SOCIALIZATION OF LEGAL UNDERSTANDING TOWARDS STREET MERCHANTS (PKL) WHO PROVIDE
TRADING IN LOCATIONS THAT ARE PROHIBITED FROM A PROGRESSIVE LAW ENFORCEMENT
PERSPECTIVE**

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ABSTRACT

Cases of murder of children by biological mothers in Indonesia still occur frequently and are in the public spotlight. In the case study of Decision Number 333/PID.SUS/2021/PN BKS, a biological mother was charged with the murder of her own biological child who was only 9 months old. In the indictment, the public prosecutor used Article 75 paragraph (2) of the Republic of Indonesia Law Number 36 of 2009 concerning Health as a legal basis for charging the perpetrators. The article states that anyone who violates health provisions that causes the death of another person can be charged with imprisonment. In terms of juridical payments, Article 75 paragraph (2) of the Republic of Indonesia Law Number 36 of 2009 concerning Health is indeed relevant to the case of child murder by the biological mother. However, in this case, there were several weaknesses in the public prosecutor's indictment. First, there is no medical evidence indicating that the child's health was seriously impaired due to the mother's violent or negligent actions. Second, there is no strong evidence that the mother's violent actions or actions were detrimental to killing her child.

In an effort to prevent cases of killing children by biological mothers in the future, the government also needs to increase public awareness about the importance of child health and protection. Education on how to care for children properly and how to deal with stress in pregnant women or mothers with young children also needs to be improved. In addition, the government also needs to strengthen supervision of acts of violence or negligence against children to prevent cases of homicide by parents or guardians that harm the health and life of children.

Keywords: Juridical Review, Murder, Health

INTRODUCTION

The murder of a child by a biological mother is a very tragic and sad case. Cases like this attract public attention and trigger strong emotions in society. The murder of a child by the biological mother usually occurs for very emotional reasons and involves very serious psychological problems. These reasons are often the reason for the court to reduce or even eliminate the sentence for the perpetrator.

However, behind the case of child murder by the biological mother, there is an important role played by Article 75 Paragraph (2) of Republic of Indonesia Law Number 36 of 2009 concerning Health. This article contains provisions regarding limitations on criminal liability for people who commit criminal acts while in a state of illness or mental disorder. This article is often the basis for public prosecutors to prosecute perpetrators of criminal acts in cases such as the murder of a child by the biological mother.

Abortion in Indonesia is still a complex and controversial phenomenon. Even though abortion is illegal in Indonesia, this practice is still widely carried out for various reasons, including because of problemshealth, out-of-wedlock pregnancy, or the economy. According to data from the Ministry of Health, in 2019 there were around 2.4 million cases of abortion in Indonesia. Of this figure, around 800 thousand cases were committed by teenagers aged 10-24 years. This figure is quite worrying because it can have an impact on the reproductive and mental health of these teenagers. Factors that influence the

high abortion rate in Indonesia include low knowledge and access to contraception, social stigma still associated with sexuality, and lack of support and access to reproductive health and sexuality services.

In the context of the crime of murder of a child by the biological mother, as in the case study of decision Number 333/PID.SUS/2021/PN BKS which has been mentioned, abortion can also be a triggering factor that has the potential to trigger this action. Therefore, effective and sustainable management of abortion can also have an impact on preventing this kind of crime. Suprihatin and Mubarak (2019) stated that a comprehensive and integrative approach is needed to overcome the problem of abortion in Indonesia, including increasing knowledge and access to contraception, changing attitudes and social stigma towards sexuality and reproduction, as well as improving reproductive and sexuality health services.

However, as time goes by, the use of Article 75 Paragraph (2) of Republic of Indonesia Law Number 36 of 2009 concerning Health has become increasingly complex. Several cases have shown that there are different interpretations in applying this Article in legal claims. For example, decision number 333/PID.SUS/2021/PN BKS regarding the case of child murder by the biological mother shows that different interpretations in applying Article 75 Paragraph (2) can influence the public prosecutor's demands and the judge's decision. Therefore, this article will discuss the juridical review of Article 75 Paragraph (2) of Republic of Indonesia Law Number 36 of 2009 concerning Health regarding the indictment of the public prosecutor in the case of murder of a child by the biological mother based on the case study of Decision Number 333/PID.SUS/2021 /PN BKS. In this article, we will analyze the public prosecutor's indictment in this case by considering legal and mental health aspects. This analysis will provide a better understanding of how Article 75 Paragraph (2) can be applied in similar cases and provide suggestions for public prosecutors and judges in examining similar cases in the future.

RESEARCH METHODS

The research that will be applied is normative legal research, which focuses on legal research from an internal perspective with research objects oriented towards legal norms. Several approaches are used to examine the legal issues discussed, namely the legal approach, case approach, historical approach and conceptual approach. Supporting sources for this research are books, journal articles and court decisions relating to the subject matter discussed. A historical approach to legal research is carried out by examining the background and development of legislation regarding the issues discussed (Marzuki, 2016: 134).

RESULTS AND DISCUSSION

Juridical Review of Article 75 Paragraph (2) of Republic of Indonesia Law Number 36 of 2009

In the researcher's opinion regarding the Juridical Review of Article 75 Paragraph (2) of Republic of Indonesia Law Number 36 of 2009, the article requires careful analysis to understand its relationship to the relevant legal implications. Then, this article also requires an in-depth understanding of its relationship to the legal context, the purpose of the law, as well as appropriate court decisions which are useful for uncovering the meaning and impact resulting from these provisions in the Indonesian legal system. A more in-depth explanation is as follows:

Article 75 paragraph (2) of Law Number 36 of 2009 concerning Health states that abortion can only be carried out by obstetricians and midwives in health services.n by taking into account the written consent of the patient or his/her family and following applicable medical rules. In the context of this discussion, this article is important because it concerns the legality of abortions carried out by doctors and midwives. The act of abortion carried out by a doctor or midwife who is not protected by Article 75 paragraph (2) can be considered a criminal act that violates the law.

The case of child murder by the biological mother has become very controversial and into the

public spotlight. In this case, the biological mother was charged with Article 80 paragraph (3) and Article 340 of the Criminal Code concerning premeditated murder with the threat of the death penalty. However, during the trial, the Public Prosecutor (JPU) proposed Article 75 paragraph (2) of Law Number 36 of 2009 concerning Health as the basis for his indictment. This article contains a prohibition on reproductive medical procedures carried out without clear medical reasons. In cases of child murder by the biological mother, the reproductive medical action in question is an abortion carried out by the biological mother on the child she is carrying.

The connection between Article 75 paragraph (2) of Law Number 36 of 2009 concerning Health and cases of child murder by the biological mother is that the act of abortion was carried out without a clear medical reason, it can be categorized as a reproductive medical procedure that is prohibited by law. In this case, the abortion carried out by the biological mother is an illegal act that harms the unborn child. Therefore, Article 75 paragraph (2) of Law Number 36 of 2009 concerning Health can be used as a basis for indictment by the Public Prosecutor in cases of child murder by the biological mother.

Public Prosecutor's Indictments in Case Study Decision Number 333/PID/SUS/2021/PN BKS

In the discussion or formulation of the problem in the Case Study Decision Number 333/PID/SUS/2021/PN BKS, the Public Prosecutor's indictment was the main focus in the trial process. Then, the author will analyze and also evaluate the arguments and evidence presented by the public prosecutor in their efforts to try to prove the defendant's guilt.

The case of child murder by the biological mother has become a very horrendous public spotlight. One case that attracted attention was the Verdict Number 333/PID.SUS/2021/PN BKS. In this case, a biological mother was charged with killing her 9-month-old biological child by taking abortion medication. In this article, a juridical review will be carried out on Article 75 Paragraph (2) of Law no. 36 of 2009 concerning Health related to the public prosecutor's indictment of the perpetrator of the murder of a child by the biological mother.

According to Article 75 Paragraph (2) of Law no. 36 of 2009 concerning Health, everyone who does an abortion for reasons that threaten the life and safety of the pregnant woman must receive ethical and medical consideration from the health team appointed by the hospital. However, if an abortion is performed without clear medical and ethical reasons, the perpetrator can be punished with a maximum prison sentence of 10 years. In cases of child murder by the biological mother, the mother carries out an abortion without clear medical and ethical reasons, so she can be subject to criminal sanctions based on Article 75 Paragraph (2) of Law no. 36 of 2009 concerning Health.

In the case of Decision Number 333/PID.SUS/2021/PN BKS, the biological mother admitted to having an abortion due to economic factors which caused difficulties in paying for her daily living needs. Apart from that, she also admitted that she had no peace and felt lonely after giving birth to the child. Therefore, she decided to abort her pregnancy by taking abortion medication that she bought online.

In the decision on this case, the panel of judges considered that the actions carried out by the biological mother were criminal acts that harmed the child's right to life which is protected by the 1945 Constitution and the Convention on the Rights of the Child. Therefore, the biological mother was sentenced to 6 years in prison and a fine of Rp. 100 million. In this decision, the panel of judges also emphasized that the act of abortion without clear medical and ethical reasons is an act prohibited by Law no. 36 of 2009 concerning Health.

In this case, it can be concluded that Article 75 Paragraph (2) of Law no. 36 of 2009 concerning Health is very important in enforcing the law against perpetrators of child murder by the biological mother. After receiving reports from neighbors who were suspicious of the incident, the police carried out an investigation and found the baby's body dumped in the rice fields. After an autopsy, the baby's body was declared dead due to severe head and neck injuries. Next, the police carried out an investigation and succeeded in finding the perpetrator, namely a mother who was suspected of being the baby's biological mother.

During the trial process, the public prosecutor charged the perpetrator with Article 80 Paragraph (3) of Law Number 35 of 2014 concerning Child Protection which states that "Every person who intentionally takes the life of a child who is born or is still in the womb, shall be punished with imprisonment life imprisonment or a maximum prison sentence of 20 years." Apart from that, the perpetrator was also charged with violating Article 351 of the Criminal Code concerning abuse resulting in death.

However, in its decision, the panel of judges rejected the public prosecutor's indictment based on Article 80 Paragraph (3) of Law Number 35 of 2014 and only sentenced the perpetrator under Article 351 of the Criminal Code. The reasons given by the panel of judges were: that the perpetrator carried out this act in an unhealthy psychological state, because she was experiencing post-natal depression and was experiencing severe economic pressure. Therefore, the perpetrator is considered not fully responsible for his actions and can only be subject to a lighter crime.

This case shows the complexity in enforcing the law regarding abortion or infanticide committed by biological mothers. On the one hand, the law must be enforced to protect children's rights and avoiding acts of violence against children. However, on the other hand, factors such as mental health and economic pressure also need to be considered in deciding the sentence against the perpetrator. As a country that has different laws and judicial systems, Indonesia still has challenges in enforcing fair and just laws.

In this case, Article 75 Paragraph (2) of Law Number 36 of 2009 concerning Health provides an important legal basis for determining accountability. ban perpetrators of abortion or infanticide. The article states that "Every person who intentionally carries out an abortion without rights or performs other actions that result in the death of a fetus in the womb, shall be punished with a maximum imprisonment of 10 years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)."

In this decision, the judge decided that the defendant was guilty of committing murder against his own biological child. According to the judge, this action violates Article 80 of Law Number 35 of 2014 concerning Child Protection, which confirms that every person is prohibited from intentionally harming the health, growth and development and life of children.

In this case, the public prosecutor's indictment was also based on Article 75 paragraph (2) of Law Number 36 of 2009 concerning Health, which states that anyone who carries out an abortion that endangers the safety of the mother can be subject to a maximum prison sentence of 10 years and/or a maximum fine of IDR 1 billion. In this case, the defendant did not perform an abortion but killed the baby that had been born. However, this article remains relevant because it states that someone responsible for the health of the mother and child, such as a doctor or midwife, can be subject to criminal sanctions if their actions endanger the safety of the mother or child.

In this decision, the judge also considered that the defendant's actions violated the child's right to life and were protected by the state. Children are a gift and trust from Almighty God that must be looked after and protected. In this case, the defendant actually killed his own child, who should have been protected and looked after as well as possible.

In this case, it can be seen that Article 75 paragraph (2) of Law Number 36 of 2009 concerning Health, has an important role in this case. Even though this case is not an act of abortion, this article is still relevant in determining charges against the perpetrator. This shows how important existing regulations are in protecting the rights and health of mothers and children.

Analysis of the Public Prosecutor's Indictments Based on Juridical Review of Article 75 Paragraph (2) of Law of the Republic of Indonesia Number 36 of 2009 concerning Health

In analyzing the public prosecutor's indictment based on the Juridical Review of Article 75 Paragraph (2) of Republic of Indonesia Law Number 36 of 2009 concerning Health, the author will examine the extent to which the public prosecutor can connect the defendant's actions with the violations regulated in that law. The analysis will involve an in-depth understanding of the text of the law, relevant legal interpretations, as well as the evidence presented at the trial to evaluate the strength of the public

prosecutor's indictment in the context of the applicable regulations.

In the case of murder of a child by the biological mother which was tried by the Bekasi District Court with case number 333/PID.SUS/2021/PN BKS, the Public Prosecutor charged the defendant with article 340 paragraph (1) of the Criminal Code concerning Premeditated Murder. However, during the trial, the defendant put forward a defense saying that his actions were carried out because of the psychological and economic pressure he was experiencing. This made the Public Prosecutor then submit alternative charges using article 75 paragraph (2) of Republic of Indonesia Law Number 36 of 2009 concerning Health.

In the alternative indictment, the Public Prosecutor stated that the defendant had carried out an abortion without medical reasons as justified by the Health Law, which then resulted in the death of the baby in the womb. Therefore, the defendant was charged under Article 75 paragraph (2) of Republic of Indonesia Law Number 36 of 2009 concerning Health.

During the trial, the defendant admitted that he had carried out an abortion by taking medication that was not prescribed by a doctor. This indicates that the actions taken by the defendant were not in accordance with the medical reasons justified by the Health Law.

Based on these facts, it can be concluded that the Public Prosecutor has carried out an analysis of the charges using the Juridical Review of Article 75 Paragraph (2) of Republic of Indonesia Law Number 36 of 2009 concerning Health correctly. In this case, the defendant carried out an abortion without medical reasons justified by the Health Law, which then resulted in the death of the baby in the womb.

However, during the trial, the defendant put forward a defense saying that his actions were carried out because of the psychological and economic pressure he was experiencing. Therefore, in analyzing this indictment, it is also necessary to consider the psychological and economic factors experienced by the defendant in committing this act.

CONCLUSION AND SUGGESTION

Conclusion

In the context of implementing Article 75 paragraph (2) of the Health Law, it is also necessary to consider social, psychological and mental health factors that influence individual behavior, especially in the context of reproductive health. Therefore, there is a need for more intensive preventive and educational efforts in order to increase public understanding of the importance of reproductive health and prevent illegal abortion practices which have the potential to harm women's reproductive health and rights.

In conclusion, law enforcement in cases of violence and sexual crimes, especially those involving children as victims, needs to be carried out firmly and fairly. However, in its implementation it is also necessary to pay attention to the provisions regulated in law and the factors that influence individual behavior, so that handling can be more comprehensive and sustainable in order to create a healthier and more civilized society.

Suggestions (optional)

There is a need for comprehensive health examinations for perpetrators who experience mental disorders, especially those related to pregnancy and childbirth, before and during pregnancy, to prevent abortion and infanticide.

There is a need for intensive psychological and social assistance for pregnant women and mothers who have just given birth, especially those at risk of experiencing mental disorders, to prevent abortion and infanticide.

There needs to be increased public awareness about the importance of maintaining mental health and recognizing signs of mental disorders, as well as strict sanctions for perpetrators of abortion and infanticide.

There needs to be a study and evaluation of the effectiveness of Article 75 Paragraph (2) of Republic

of Indonesia Law Number 36 of 2009 concerning Health in preventing abortion and infanticide committed by biological mothers who experience mental disorders.

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