



JURIDICAL STUDY ON THE LEGALITY OF ABORTION IN THE CASE OF RAPE AND THE RELATIONSHIP WITH REGULATION OF ABORTION IN THE KUHP KUHP (COMPARATIVE BETWEEN THE CRIMINAL ACTION OF ABORTION IN THE INDONESIAN LAW SYSTEM AND ABORTION IN THE SINGAPORE LAW)

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Abstract

Abortion has been a controversial topic throughout history due to a variety of perspectives. There are pros and there are cons. Including the regulation of abortion in the Draft Law (RUU) of the Criminal Code, where there are provisions and/or Articles on abortion and/or abortion. In the Criminal Code, abortion is regulated in Articles 251, 415, 469, 470, and 471. Then when we look at the act of abortion that is legalized according to the provisions in his country, the real example is in Singapore which is in the Termination of Pregnancy Act Cap. 324 the implementation of abortion is not prohibited. Meanwhile, in the ius constitutum of Indonesia, abortion is a criminal act or crime against life regulated in Articles 229, 346-349, and 535 of the Criminal Code, and regarding the exemption of abortion in Indonesia itself is regulated in Law No. 36 of 2009 on Health. Therefore, this writing, the author intends to legally examine the legalization of abortion in rape cases in Indonesia, which should be in the Criminal Code as a constituent can contain the rules, with a comparison between abortion in Indonesia and abortion in Singapore.

Keywords: Comparative law, Abortion, Rape, Criminal Code, Singapore.

I. PRELIMINARY

A. Background Behind

Abortion is something an action in which a woman based on his will abort and/ or abort the baby who is in the content . Abortion as if Becomes interesting topic _ for debated in various circles , which of the cause is that by philosophical action abortion that understood as existing action _ in diverse views . _ According to certain group of people by absolute abortion seen as right a woman on her body , which means no could influenced and/ or arranged by party outside besides than herself alone . With so , girl have full rights _ on control to his body , and because that's so he entitled in determine is he want to contain a baby , or he want remove the fetus that is in the content . But in reality as based on theory law nature , someone could do on his will only limited to the ethics that influence it . That is base ethics that Becomes a standard controlling norms _ behavior someone . Then ,



where is someone want To do action abortion or no do , there there are also standards ethics something the people who will set , or control action abortion that , is Thing the is prohibited act _ or allowed .¹

So from that if there is conversation related legality abortion , reap many diversity the view inside consist from opinions on the pros and cons . is must defend right the safety of the pregnant mother baby and/ or fetus , or defend right life the fetus that is in content . Of course has is known many circles , that no all countries legalize action abortion , and when someone legalizes _ abortion , thing the depends to situations faced by pregnant women . _ _ As will _ discussed in Thing this for example is in the country of Singapore, where abortion only could conducted or allowed to Singapore citizen only , wife from a person who is a Singaporean citizen , and if a woman already stay in Singapore for a minimum of 4 (four) months , and if based on Request for 24 weeks the time of pregnancy , which is 6 months first .²

The above the different with Settings abortion in Indonesia, apart from naturally Settings action abortion has set in Articles 229, 346-349, and 535 of the Criminal Code , elements action abortion in Indonesia is also regulated in Article 75 of Law no. 36 of 2009 concerning Health, as *Lex Specialist Derogat Legi Generalist* . Which is Article 75 ? state that basically _ everyone is banned for To do abortion , however there is exception that makes somebody could To do abortion , that is if there is indication emergency threatening medical _ life mother / fetus , as well as outcome - induced pregnancy _ rape that can cause psychological trauma for the victim . Provision the could said clarify Settings abortion available _ in the Criminal Code.³ Besides that , action abortion in question only could held after through counseling pre action and post action by a competent and authorized

¹ Fokky Fuad, *Abortion A Debate Philosophy of Law* , Journal of Al-Azhar Indonesia Humanities Series , Vol. 6 No. 1, Jakarta: Faculty of Law, Al-Azhar University, 2021, p . 1-2.

²Ministry of Health Guidelines on Termination of Pregnancy para 1.2, April 1, 2004, accessed from [https://www.moh.gov.sg/docs/librariesprovider5/licensing-terms-and-conditions/revised-guidelines-on-termination-of-pregnancy-\(dated-17-apr-2015\).pdf](https://www.moh.gov.sg/docs/librariesprovider5/licensing-terms-and-conditions/revised-guidelines-on-termination-of-pregnancy-(dated-17-apr-2015).pdf) , accessed on 27 May 2021, 11.18 WIB.

³ Fokky Fuad, Op. *Cit* ., hlm . 5.



counselor , in Thing this counselor is a doctor , psychologist , character community , religious leaders , and everyone who has interests and skills on Thing that . Furthermore , in Article 76 of the same Law , that abortion in question in Article 75 that could conducted with criteria as following :⁴

- a. Before pregnancy 6 (six) weeks old calculated from day first period last , except in Thing emergency medical ;
- b. By power health that has skills and authority that have a certificate applied by the Minister;
- c. With agreement mother pregnant in question ;
- d. With permission husband , except rape victim ;
- e. Provider service adequate health _ conditions set by the Minister.

Article 76 is seen has arrange about requirements for abortion could conducted based on provision Article 75 of Law no. 36 of 2009 concerning Health. However , it turns out that in Article the there is the weakness by article the declared that provider service health that can doing abortion is provider service must - have health Fulfill conditions set by the Minister. However , according to the data obtained until moment this not yet there is Regulation of the Minister of Health which includes conditions like _ what should _ fulfilled by the provider service health for could help doing abortion so that there is something obscurity .

More carry on again Settings loaded abortion _ in the Criminal Code Bill, it is known that no there is significant change _ than the previous and/ or current Criminal Code apply moment this . So about abortion in case rape has become something necessary thing _ discussed , and became important for discussed about legalization , considering the Draft Criminal Code as a something aspired rule _ or will _ enforced in the future expected more can give guarantee will certainty law compared with the previous Criminal Code . What's more again in reality , cases of rape victims who want to abort the content with various type background

⁴ Articles 75-76 of the Law Number 36 of 2009 concerning Health.



behind the majority triggered with conditions and/ or shock psychological , many end _ with penalty criminal for rape victims who commit abortion . So from that comparison two system law Becomes important done , in study legalization abortion in case rape in relation with the Criminal Code Bill. ⁵which one in Thing this as ingredient comparison will discussed related Indonesian law action abortion , in which Indonesia is included to in family *Civil Law System*, and related Singapore law action abortion , of which Singapore is included in family *Common Law System*.

So that then , from perspective comparison law in writing this by juridical discussed about is possible in development Indonesian adults _ this related abortion will lead to legalization abortion specifically for rape victims who are expected will loaded in the Criminal Code Bill. Because update law criminal is something effort repair the law carried out for perfect law previously already _ no in accordance with current situation _ this .⁶ So from that writer pour discussion the in title “ *Juridical Study About Legalization Abortion In Case Rape and its Relation With Arrangement Abortion In the Draft Criminal Code (Comparison Between Actions) Criminal Abortion In Indonesian Legal System and Abortion In Singapore Legal System)* ”.

B. Formulation Problem

Issues discussed _ in article this among others:

1. how case about action abortion in Indonesia by convicted rape victims later criminal _ linked with the Criminal Code Bill?
2. is Settings action abortion in Singapore is possible for applied in Indonesian law through the Criminal Code Bill as a legalization abortion in case rape ?

⁵Ida Bagus Made Adi Saputra and I Gusti Ngurah Parwata , *Settings Follow Criminal Abortion in the Criminal Code and Law no. 36 of 2009 concerning Health*, Journal Kertha Speech , Vol. 9 No. 12, Denpasar: Faculty of Law , Udayana University , 2020, p . 8-9.

⁶Nawawi Arif , *Criminal Law Reform* , Bandung: Citra Aditya Bakti , 2016, p . 10.



C. Method Study

As definition than study law that alone is something business that can find rules , principles , or doctrine law for answer problem law for get answer from problem the law at hand . In writing article scientific this writer use method study law juridical normative . Where is the author To do study law with through which library is the data? obtained from study ingredient library , namely the so- called with secondary data To use answer problem related laws . _ because _ method the research use study juridical normative , then writer use type approach conceptual , legislation , and literature (*library search*).⁷

Besides that , in writing this comparison is also used law as something method research / science . As stated by Rudolf D. Schlessinger that comparison law (*comparative law*) is a method investigation with destination for get more knowledge _ in about ingredient law certain . Then comparison law used as technique or method working element actual foreigner _ in something problem law , deep study this related element foreign worked by the author is one _ Settings law related abortion in the next country of Singapore conducted comparison with Settings law related abortion in Indonesia .⁸

II. DISCUSSION

In Indonesia action abortion has clear categorized as as prohibited acts and / or threatened with penalty criminal , as in Articles 229, 346-349, and 535 of the Criminal Code. Even with a lot events that happened as example concrete from action abortion in Indonesia, can seen that Indonesia forbids all action abortion for all reason , except for save life mother (*abortion provokatos medical or therapist*). Which is understanding than abortion that himself among the experts _ there is two type definition namely , natural abortion and artificial abortion . Meaning from natural abortion is mechanism which _

⁷ Soerjono Soekanto and Sri Mamudji , *Normative Legal Research : A Overview Brief* , Jakarta: PT. King of Grafindo Persada , 2007, p . 12.

⁸ Barda Nawawi Arief , *Comparative Criminal Law* , Jakarta: Rajawali Pers, 2011, p . 5.



natural cause termination of pregnancy before 28 weeks old , while the intended with artificial abortion is something effort made _ by on purpose for stop pregnancy _ before 28 weeks old , where the fetus (result) conception) issued that no could endure live outside . _ Thereby although abortion for reason outside _ save life mother categorized as as action crime , incident abortion in Indonesia is known recorded very high . Utomo et al , estimate that about 2 million Indonesian women end her pregnancy with action abortion , and some big among them is action abortion that doesn't safe .⁹

What's more again rampant case rape that happened to Indonesian women , perpetrated by perpetrators who have the heart To do deed despicable the until cause pregnancy on obvious action _ no desired by the victim, as well as her pregnancy . Where is the rape is one _ crime violence to the most worried woman compared to type crime violence other . Even no only for women , but also for society and humanity . Because that's crime most potential rape cause creation level of “*fear of crime*” or Fright to crime is high in society , compared to other types crime violence other .¹⁰

Many of the victims want end her pregnancy because feel no want baby and/ or the fetus in the womb , as results from incident crime the rape that befell him snatch things that are not he wanted . However as listed settings _ in the Criminal Code as provision law criminal law applicable in Indonesia, regarding abortion included _ to in act criminal , which type the crime set started of , Article 299 every person with on purpose treat or ordered a woman for abort , make abortion for look for profit or as eye livelihood ; Article 346 women pregnant abort the content ; Article 347 everyone has an abortion content a woman without his consent ; Article 348 everyone has an abortion content a woman with his consent ; Article 349 Doctors , Midwives , or interpreter helpful medicine _ To do crime as listed _ in Articles 346, 347, and 348; and Article 535 each person individually

⁹ bachelor Agus Wise Pranata , I Nyoman Sujana and Diah Gayatri Sudibya , *Sanctions Criminal To Follow Criminal Abortion (Study Case Decision Number : 87/ Pid.G /2007/ Pn.Gir)* , Jurnal analogy law , Vol. 2 No. 2, Denpasar: Warmadewa University , 2020, p . 149.

¹⁰ Mulyana W. Kusumah , *Crime and Deviance : a perspective criminology* , Jakarta: LBH Foundation, 1988, p . 47.



blatantly show something means for abort content . which every deed the have threat the crime of each of which has been defined and listed in each Article .¹¹

If our see and study articles in the Criminal Code , then will seen that the Criminal Code prohibits and/ or no allow action abortion in Indonesia. which one can It is also said that the Criminal Code does not legalize abortion without except , even even though a *bortus provocatus medicinalis /abortus provocatus therapeutic is also prohibited* . Thereby as has formulated , then in case abortion will there are at least two perpetrators who are threatened penalty criminal , that is a girl who is contain as well as whoever and/ or everyone with _ on purpose help a woman the in abort the content .¹²

Next not only In the Criminal Code, abortion is also regulated in Law No. 36 of 2009 concerning Health which applies Constitution the is as embodiment from adage the law " *lex specialis derogate legi " generalist "* from provision related act criminal abortion in the Criminal Code. which one in Law No. 36 of 2009 concerning the Health , abortion set in Articles 75, 76, 77, and there are provision criminal in Article 194. Even though in Article 76 contains Settings related requirements for abortion could conducted based on provision in Article 75, which is abortion allowed because existence reason medical or pregnancy consequence rape , which has been clear conditions different with the Criminal Code which does not legalize abortion without except . However rule about action abortion only could conducted age maximum pregnancy 40 days (6 weeks) and abortion only could conducted after through the counseling process and/ or advice pre action and end with counseling post action carried out by a competent and authorized counselor . Where is the counseling process in practice ? the no easy and sometimes eat quite a long time with various the reasons and considerations that exist , so that in fact in Indonesia there are many very case pregnant woman _ as a victim of crime rape no could abort the content , and even many arrived _ To do action abortion ends in beating sanki the sentence imposed against him .¹³

¹¹ Articles 229, 346-349, and 535 of the Criminal Code .

¹² Suryono Ekotama , Harum Pudjiarto , and G. Widiartana , *Abortus Provocatus For Rape Victims : Perspective Victimology Criminology and Criminal Law* , Yogyakarta: Atmajaya University , 2001, p . 71.

¹³ Raditya Ermana H, Nyoman United P, and AM Endah Sri A, *Legal Protection for Women Victims of Violence Sexual As Provocatus Abortion Perpetrators Indication Rape* , Diponegoro Law Journal, Vol.



So in Thing this , regarding discussion legalization abortion in Indonesia is becoming required something comparison with other countries that have base law in legalize action abortion . That is with Singapore, which also has the rules alone about legalization action abortion . As according to Guttridge , Comparison law is differentiate between comparative law (compare two system law or more) and *foreign law* (studying law foreign without by real compare it with system another law .¹⁴ Then as according to Romli Atmasasmita , comparison law is knowledge knowledge that learns by systematic law (criminal) of two or more system law with use method comparison .¹⁵As well as goals than comparison law according to Prof. Sudarto , in learn it there is trend for lead learn two law foreign . So that could said by general goal is give satisfaction for people who have desire want to know which is scientific ; deepen definition about institution society and culture alone ; bring attitude critical to system law alone . Then destination in particular , can said for understand something Thing in connection with embraced principle national active in the Criminal Code, namely: Article 5 paragraph (1) 2, which " rules " criminal in Indonesian laws apply for citizens outside Indonesia commit one of the following : an act by a rule criminal in Indonesian legislation is seen _ as crime whereas according to the legislation of the country where the act done , threatened with criminal " .¹⁶

So for example , when a Indonesian women do *abortion provocatus criminals* in Singapore over there no threatened criminal , then when woman the return to Indonesia, he no could convicted . Whereas use and/ or benefit comparison law criminal , as according to Rene David and Brierley among them is , useful in study law that is historical and philosophical , important for understand more good and for develop law national our alone , help in develop understanding to other nations and because of that give donation for create good relationship / atmosphere _ for development relationships international .¹⁷

6 No. 1, Semarang: Diponegoro University Faculty of Law , 2017, p . 8-10.

¹⁴ Romli Atmasasmita , *Comparative Criminal Law* , Bandung: Mandar Maju , 1996, p . 7.

¹⁵ *Ibid.*, p . 10-12.

¹⁶ Barda Nawawi Arief , *Op.Cit .* , p . 25-26.

¹⁷ *Ibid.*



In Thing this the comparison in question is to two countries that differ in scope family the law . Which is family law that myself by Rene David shared to in four family law , that is *The Romano-Germanic family*; *The Common Law family*; *The family of Socialist Law*; *Other conceptions of law and the social order* (Conceptions law and social order other). What was discussed in writing this , is like the country of Indonesia adhere to system law *civil law* which belongs to *The Romano-Germanic family*, which basically consist from system codified law , oriented to definitions _ law , concepts or thoughts __ abstracts , techniques-laws , and teachings or legal dogma . Then , the country of Singapore which adheres to system law deep common *law* family law of course enter to in *The Common Law family*, which is based on or formed from solution law by concrete by the judge in solve individual matters . But Singapore is still enter existence source law in the form of *statute law* that is in Thing this Constitution written related rule action abortion that alone .¹⁸

A. Cases of Abortion in Indonesia by Rape Victims Crime and its Relation With the Criminal Code Bill

In 2018 the Indonesian people have made surprised and also angry on the incident that happened a teenager woman from Jambi with name his disguise is the " Sun " who is 15 years old . Where is the Judge of the Muara Bulian District Court drop punishment six month prison to Sun , cause he abort (abort) the womb which is results from rape by brother her biological alone . Case the suddenly electrifying various circles , where should rape victims be get protection , support counseling , and solidarity , in fact on the contrary rather whacked with chapter criminal . Then based on release *Institute for Criminal Justice Reform* 23 July 2018, indicated there is violation serious procedural law in handling the case at the Muara Bulian District Court that . Where is the Supreme Court, the Commission Prosecutors and Commission Judicial requested for To do inspection to Justice it . The case experienced by Matahari the just one from hundreds case rape experienced by many

¹⁸ *Ibid.*, p . 17.



_ women in Indonesia even to child female .¹⁹

Then in 2017 the Commission Indonesian Child Protection recorded 116 cases violence sexual specifically rape to women and children girl what happened in realm private as well as number of communities around 1,288. With hundreds even thousand case rape that happened women and children , is the word " fair " appropriate ? thrown when the judge even give penalty prison to those who decide abort and/ or abort the content ? Of course if ask the heart conscience , clear just will cause conflict alone even in reality until raises pros and cons in society .²⁰

As Settings existing abortion _ in the Criminal Code already clear no legalize abortion in any reason and / or no there is exceptions , as well Law No. 36 of 2009 concerning health and regulation Government No. 61 of 2014 concerning Reproductive Health which says has organize and give exception against rape victims it seems not yet could give guarantee full to legalization abortion against rape victims . Where though action abortion given possibility for conducted will but with tight existing conditions , and only given to women victims of rape and women who experience indication medical , which are the conditions for access service action abortion that too _ complicated and almost impossible for could accessed . So from that , urgency Settings abortion in the Criminal Code Bill becomes something more things _ questionable . Where is the Criminal Code Bill ? Becomes hope for Indonesian people so that they can more ensure protection law as well as justice also included in Thing action long abortion _ this always Becomes topics debate because Settings to action abortion this considered controversial even rated discriminatory against rape victims .²¹

¹⁹ Tunggal Pawestri : Gender and Human Rights Consultant, When *Victims of Rape To do Abortion : Why imprisoned and not strengthened ?*, July 31 2018, accessed from <https://www.bbc.com/indonesia/indonesia-45015083> , accessed on 28 May 2021, 20.24 WIB.

²⁰ *Ibid.*

²¹ Srykurnia Andalangi , *Abortion Action With Indication Medical Due to Occurrence Pregnancy Consequence Rape* , Journal of Lex Crimen , Vol. 4 No. 8, Manado: Faculty of Law, Sam Ratulangi University , October 2015, p . 94- 100.



In fact , in the draft of the Criminal Code Bill which also includes : Settings rated abortion _ no far different with the Criminal Code which is still apply moment this , that is Chapter related among them are :

a. Article 251:

- 1) Everyone who gives drug or ask a woman for use drug with tell or cause hope that drug the could result in fall content convicted with criminal imprisonment for a maximum of 4 (four) years or criminal the most fines category IV.
- 2) If Everyone was like referred to in paragraph (1) do deed the in operate his profession could sentenced criminal addition in the form of revocation right as meant in Article 86 letter f.

b. Article 415:

Everyone without _ right by blatantly show something tool for abort content , offer , broadcast writings, or show for could get tool for abort content convicted with criminal imprisonment for a maximum of 6 (six) months or criminal the most fines category II.

c. Article 469:

- 1) Every aborted woman _ or turn off the content or asking someone else to abort or turn off content the convicted with criminal imprisonment for a maximum of 4 (four) years .
- 2) Everyone who aborts or turn off content a woman without his approval convicted with criminal imprisonment for a maximum of 12 (two) twelve) years .
- 3) If the action as referred to in paragraph (2) resulted in death woman the convicted with criminal imprisonment for a maximum of 15 (fifteen) years .

d. Article 470:

- 1) Everyone who aborts or turn off content a woman with his approval convicted with criminal imprisonment for a maximum of 5 (five) years .



- 2) If the action as referred to in paragraph (1) resulted in death woman the convicted with criminal imprisonment for a maximum of 8 (eight) years .

e. Article 471:

- 1) Doctor , midwife , paramedic , or helpful pharmacist _ To do Follow Criminal as meant in Article 469 and Article 470, criminal could plus 1/3 (one third) .
- 2) Doctor , midwife , paramedic , or pharmacist who does Follow Criminal as referred to in paragraph (1) may sentenced criminal addition in the form of revocation right as meant in Article 86 letter a and letter f.
- 3) Doctor who did abortion content because indication emergency medical or against rape victims in accordance with provision regulation legislation , no convicted .²²

Seen that a number of chapter above __ no far different with existing _ In the previous Criminal Code , there are Article 471 paragraph (3) in the Draft Criminal Code does not have clear setting . _ Whereas has is known that regulation legislation __ related abortion that has been there is n't any could give guarantee law (legalization) regarding abortion by rape victims . Where in reality many rape victims do not knowing that they middle contain , more again children below __ __ age , which is still lay to health reproduction , and also limitations access information and taboo assumptions about talks about Thing the by open . Most among the victims, the pregnancy new is known after there is change body shape and usually new seen after enter month fourth or 12 weeks and p the far from the limit that has been set Act . __ This is what often make women and children rape victim _ rather given penalty criminal (prison) cause To do abortion at age pregnancy that exceeds listed rules _ in regulation legislation . because _ that , the Criminal Code Bill should be could Becomes Street alternative , where is the rule about protection law or legalization action abortion in case rape should could entered in the Draft Criminal

²² Articles 251, 415, 469, 470, and 471, *Draft Constitution Republic of Indonesia Number ... Year .. About the Criminal Code* , Jakarta : DPR RI, September 2019, p . 57-1.



Code with clear . However , as has been be included that in the Criminal Code Bill no entered protection to rape victim who commits _ abortion .²³

B. Arrangement About Abortion in Singapore When Applied In Indonesian Law Through the Criminal Code Bill as a Legalization Abortion In Case Rape

Singapore has Constitution related action the abortion itself , that is in *Termination of Pregnancy Act Cap. 324*. However , Singapore also has a number of regulation about action abortion in *Penal Code*. There is contradiction in between *Penal Code* and *Termination of Pregnancy Act* as Constitution Abortion that alone , because is known that *Penal Code Singapore* adopted from English that doesn't legalize action abortion , will but formula articles in Related *Penal Code* abortion by assertive in the article state that regulation related abortion in Singapore is submissive to *Termination of Pregnancy Act*. Next *Penal Code* includes that dominant subject _ talked about is helping party _ implementation abortion , which thing the could addressed to practitioner medical that is not have permission practice from the Minister of Health of Singapore in To do action abortion , or party others who help implementation action abortion besides from practitioner medical . In Thing the type act the crime listed is crime , as well formula penalty the crime listed is criminal cumulative and criminal alternative .²⁴

Based on existing rules _ in *Termination of Pregnancy Act* , action *abortion provocatus medicinalis* or *abortion provocatus criminalist* no prohibited . If you pay attention , regarding Thing the there is difference with what is listed in *Penal Code* that leads to forbid form action *abortion provocatus* who don't caused emergency medical . Based on history , *the Penal Code* is known fundamental to law England adopted in the 19th century. In general action abortion is something act punishable crime _ with penalty as in Articles 312-316 of the *Singapore Penal Code* . However ,

²³Tunggal Pawestri : Gender and Human Rights Consultant , *Loc.Cit* .

²⁴ Annisa Nirmala Sephaya , *Application principle national active in act criminal abortion by Indonesian citizens in Singapore (Study Comparison Arrangement Abortion in Indonesia and Singapore)*, Jurnal Law Studies , Surakarta: Faculty of Law, Eleven University March , 2015, p . 58.



action _ abortion Becomes allowed if based on intention good , that is for the sake of saving life a woman pregnant . Act _ _ Abortion 1974 (*Penal Code* , sections 312-316) which has been changed with *Act No. 12 of 1980*, set action abortion in Singapore more continued . In Constitution the mentioned that somebody no will convicted because To do abortion During pregnancy the terminated by a licensed physician and act based on agreement written woman pregnant in question for 24 weeks first pregnancy . More from limit time that , action abortion only can run for save life mother and/ or woman pregnant , and prevent injury permanent big for health physical and mental of a woman pregnant . Then is known that new law _ that has abolish *Termination of Pregnancy Authorization Board* and agreed terms _ action abortion .²⁵

Next *Termination of Pregnancy Act* no only arrange requirements related action abortion . In Settings the also included some provision the crime in which consist from a number of type crime about action abortion these , including :

- a) Article 3 paragraph (4): everyone who does not Fulfill provision abortion contained in paragraphs (1) , (2), and (3). With threat the crime is criminal prison no more than 3 (three) years or fine no exceed \$3000.
- b) Article 5: anyone who forces a woman pregnant so that To do opposite abortion _ with his will . With threat the crime is criminal prison no more than 3 (three) years or fine no exceed \$3000.
- c) Article 7: every person concerned for guard notes medical in connection with implementation abortion as well as related with implementation abortion , then uncover fact or related information _ with action abortion the except to the people involved and to destination as can _ determined . With threat the crime is criminal prison no more than 12 months or the amount of the fine no over \$2000 or both .²⁶

²⁵ *Ibid.*, p . 63.

²⁶ Article 3-7 (*Article 3-7*), *Termination of Pregnancy Act (Chapter 324)*, *Original Enactment: Act 24 of 1974, Revised Edition 1985 (30 March 1987)*, Singapore: Singapore Status Online (A Singapore Government Agency Website), accessed from <https://sso.agc.gov.sg/Act/TPA1974> , accessed on 28 May 2021, 21:28 WIB.



Then according to Article 4 paragraph (2) *Termination of Pregnancy Act* duration pregnancy that calculated from day first menstruation final woman pregnant in question until end of 24 weeks or until week end any time between 16th week and sunday 24th , and/ or duration pregnancy can confirmed with test pregnancy accurate . That thing different with Settings abortion in Indonesia which abortion allowed conducted before pregnancy 6 weeks old because _ by written *The Termination of Pregnancy Act* includes that abortion still could conducted During age content not yet up to 24 weeks , or after reach 16 weeks however not yet 24 weeks old . Difference related limit time implementation abortion the related with the belief of the majority of Indonesians Muslim , who believes that after 40 days , the baby and/ or fetus in content has have life so that if abortion done at age content that exceeds 40 days or 6 weeks , p the same case with pull out right life someone who has animate .²⁷

As Indonesia adheres to *civil law system* where the law is codified such as the Criminal Code is source main law . _ While Singapore itself adhere to which *common law system* is the decision? the previous court for same case _ is source law and law no occupy such a role important . Then as Settings abortion in Indonesia which is loaded in Health Law is limited to only allow somebody for To do abortion because indication emergency known medical _ since age early pregnancy , both life - threatening life mother and/ or fetus , or pregnancy caused _ act rape that causes psychological trauma for victims. Next one provision related indication emergency medical and pregnancy consequence rape that set in PP on Reproductive Health . Where is the setting about legalization abortion in Indonesia can said still too impossible with existing settings _ with complicated requirements _ as has explained , especially again on PP No. 61 of 2014 concerning Reproductive Health which has not been strengthened with regulation Minister needed _ for clarify parts certain . While in Singapore, which is regulated in *Termination of Pregnancy Act* , abortion allowed if requested by woman pregnant in question and based on

²⁷ Article 4 paragraph (2), *Termination of Pregnancy Act* (Chapter 324).



agreement written from him . In Thing this , the reason whatever could received for doing abortion During Thing the conducted with Fulfill requirements and above his will self - proven with agreement written from the woman concerned .²⁸

As requirements for To do abortion in Indonesia tends to more tight , and seems very difficult for could conducted more again against pregnant victims results from crime rape , it seems if Settings related abortion in Singapore is applied in Indonesia as a legalization abortion in case rape , will more could ensure protection law for rape victim who wants to abort the content . Where are the requirements like in Singapore it should be fulfilled among them is requirements related with citizenship , that is the woman who did abortion must is Singapore citizen , is holder permission work or wife from holder permission work foreigners in Singapore, or has located live in Singapore at least 4 months before To do action abortion . Which if requirements the no fulfilled , action not even abortion could done . Even as has been explained that there is requirements other must _ also fulfilled is action abortion that alone must based to Request the woman in question as well as based on agreement written from him , and in Thing this agreement husband no necessary and of course done by practitioners authorized medical .²⁹ _

Because Indonesia is a adherents system law *civil law* that makes codification law written as source law main , then Settings abortion in the articles that are loaded in something law written must loaded by clear and precise . In Thing this , what is meant is the Criminal Code Bill as Settings about law a crime _ day will enforced already duly Becomes source law that can load legalization action abortion for victims of cases rape with change payload articles __ related abortion that has been listed in _ Articles 251, 415, 469, 470, and 471. With change payload articles in the Criminal Code Bill , such as: provision related abortion in Singapore who views that abortion no is act criminal , especially again for victims of rape , in Thing right pregnant woman _ because of a rape victim will protected , and legalized to Thing the of course required remember certainty law through conditions listed _ in law

²⁸ Annisa Nirmala Sephaya , *Op.Cit .* , hlm . 73-74.

²⁹ *Ibid.* , p . 76-77.



written indeed important in a country that adheres to system law *civil law*. With so , then Settings action abortion in Singapore is becoming possible for applied in Indonesian law as legalization abortion in case rape if Settings sort of the entered to in the Indonesian Criminal Code Bill of course with based on awareness that legalization to action abortion for rape victims of course required its existence .

Lastly , remember that problem gift criminal that alone have two meanings, the first is in the general sense concerning shaper the law that stipulates system penalty law criminal (gift) criminal *in abstracto*), the second in a concrete sense that is, concerning various bodies all of which support and implement system penalty law criminal it . As the Criminal Code alone has set as well as include reactions _ what will _ accepted by the person who did prohibited act _ it . In law modern criminal reaction that no only in the form of criminal however also includes _ what is called action , whose goal is for protect Public from actions that harm him .³⁰Which later existence attitude than the drafter of the Criminal Code, it is known that happened something attitude regarding “ Criminal and Action” as implementation balance , against destination the sentencing _ from thinking that system law criminal is one unity system that has purpose , and punishment only is means or tool for reach something purpose . On the basis of that's it why does the Criminal Code Bill formulate destination punishment that is based on balance two target tree that is protection community and protection individual .³¹

If refers to things that , then actually action abortion based on the reason that the victim is pregnant from action crime rape , should be there is protection for individual the in Thing this is a victim. Because according to logic , action thereby no there is losses incurred _ by concrete for society in general . Where are abortions performed by rape victims should seen as the thing when according to the victim 's pregnancy permanent continue , will cause loss psychological lifetime real life _ when deed the threatened with penalty criminal , goal than criminal for protect they

³⁰ Sudarto , *Law and Criminal Law* , Bandung: Alumni, 2007, p . 41-41.

³¹ Syaiful Bakhri , *Problematic Indonesian Criminal Law Reform* , Jakarta: Muhammadiyah University Jakarta, 2019, p . 11.



from actions that can harm him that no achieved . Update law criminal , sue will existence research and thought to problem central , which is very fundamental and strategic , including in the Thing policy in set penalty criminal , namely policy set criminal in legislation . which thing the made as a policy line system crime and punishment , which at the same time as base legality at the stage next .³² In Thing this , regarding rule action abortion for rape victims should Becomes important thing _ for loaded the protection in the Criminal Code Bill

III. CLOSING

A. Conclusion

As abortion is actions and/ or action a women based on his will abort baby (fetus) in the content , which in Indonesia with clear has known and listed in Articles 229, 346-349, and 535 of the Criminal Code, as prohibited and threatened _ _ with penalty criminal . Which in reality in society , abortion that Becomes real discussion _ controversial because of the variety view and/ or opinion , more again when talk about related legality abortion . Then the ones that do n't free from highlight Public is Settings abortion in design Law (RUU) of the Criminal Code, which regulates that loaded in Articles 251, 415, 469, 470, and 471 which have been goods of course provision about abortion the reap the pros and cons . Even besides rule action abortion in Indonesia there is recognized in the Criminal Code as act criminal , exception alone is set in Law No. 36 of 2009 concerning Health, which is in the discussion above has explained that regulation the not yet could ensure proper exclusion and protection _ for perpetrator abortion is a victim of rape .

So that then conducted comparison with related country Singapore act legalized abortion _ according to provisions in their country , namely: in *Termination of Pregnancy Act Cap. 324* the one with clear said that implementation action abortion no prohibited . From result analysis conducted by the author , with a lot found cases

³² Barda Nawawi Arief , *Policy Legislative In Countermeasures Crime With Criminal Prison* , Semarang: Diponegoro University , 1996, p . 3-4.



that are not take sides justice for victims with give penalty criminal against rape victims who commit abortion to content , up to finally could concluded that Settings related abortion in Indonesia is indeed required existence something deep update _ Thing This Draft Criminal Code becomes something things discussed _ more continued . Where are the rules in the Criminal Code Bill seen no far different with existing _ in the previous Criminal Code . Whereas should be , with a lot long - term consideration this always cornering a pregnant rape victim then abort content , rules related protection law or legalization action abortion could entered in the Criminal Code Bill.

So reflect on the country of Singapore which also has Constitution related action abortion , that is *Termination of Pregnancy Act Cap. 324*, which previously Singapore also had Constitution Abortion 1974 (*Penal Code , sections 312-316*) which has been changed with *Act No. 12 of 1980*, which was then state that somebody no will convicted because To do abortion During pregnancy the terminated by a licensed physician and act based on agreement written woman pregnant in question for 24 weeks first pregnancy . More from limit time that , action abortion only can run for save life mother and/ or woman pregnant , and prevent injury permanent big for health physical and mental of a woman pregnant . And it is also known that in *Termination of Pregnancy Act* , abortion allowed if requested by woman pregnant in question and based on agreement written from him . In Thing this , the reason whatever could received for doing abortion During Thing the conducted with Fulfill requirements and above his will self - proven with agreement written from the woman in question . Meanwhile , in Indonesia, the requirements for abortion are: could conducted tend more tight , and seems very difficult for could conducted more again against pregnant victims results from crime rape .

B. Suggestion

Recommendation writer to continuity law positive Indonesia in the future , especially about guarantee protection law for rape victim who wants to abort the content , is should Settings related abortion as in Singapore is applied in Indonesia as legalization abortion in case rape , for protection law for rape victim who wants to



abort the content could more guaranteed . which of existing requirements _ in provision action abortion in Singapore a must fulfilled , is requirements citizenship , and conditions other where action abortion that based to Request the woman in question with based on proof agreement written from him .

With changed payload articles related abortion inside ___ Articles 251, 415, 469, 470, and 471 of the Criminal Code Bill, such as provision related abortion in Singapore who views that abortion no is act crime , in particular for rape victims , then right pregnant woman _ because of a rape victim will protected , and legalized to Thing the of course required remember certainty law through conditions listed _ in law written indeed important as Indonesia is a country that adheres to system law *civil law*. Next as the Draft Criminal Code formulates destination punishment based on balance _ protection community and protection individual . Should action abortion based on the reason that the victim is pregnant from action crime rape , can protected remember the individual in question in Thing this are victims of rape . Where is the update law criminal , must load study as well as thinking including in policy set penalty criminal , in legislation which is also base legality for Step next . Namely , in the related Criminal Code Bill rule action abortion for rape victims should Becomes important thing _ protection , considering that the Draft Criminal Code is a update law the real crime expected could realize justice in society .

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