

# Abortion on Law and Moral Perspective in Indonesia

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## Abstract

Pro and cons about abortion is still being debated today. Actually, abortion is prohibited in Indonesian Medical Ethics Code and Criminal Code, however The Law on Health 2009 (replacing The Law on Health 1992) said that the abortion can be done with certain conditions. Now a days, developments of the abortion regulation laws (The Law on Health 2009) is questionable, whether as a step to moving forward or just like such of moral decline that was become an outline in the law product? In principle The Law on Health 2009 was declare that the act of abortion should not be done, but in other case there are some exceptions such as Medically Indicated, fetus suffered from severe genetic diseases and congenital malformations, and as an impact of the rape. From the law side and also from the ethics and moral oriented in human life, abortion can't be justified but the new rules in daily application must be depended by considering the ethical and moral aspect. Because of that law aims to regulate conduct and tranquility in society, while moral set the inner action. This article attempts to highlight the legalization of abortion in the act of the law legislature, based on the ethics and moral aspects.

**Keywords:** abortion, law, ethic, moral.

## 1. Introduction

Abortion is a term of the death of fetus in woman's womb. There is no more explanation of this case in Law, but based on the term of abortion it means to abort or something that make it aborted which means fall or fail. So, pregnancy abortion means aborting the pregnancy intentionally or making the fetus failed to be alive (Musa Perdanakusuma, 1984:192). An abortion is done to a fetus which is not *viable* yet and it is still in the woman's womb.

Until these days, abortion still emerges pro and contradiction in the world, especially based on the view of religion, norm, ethics, and moral. Based on moral view, an abortion means to take the fetus intentionally and it will cause the death of the fetus, which happens since the conception process until the end of its birth.<sup>1</sup>

There are some medic terms of the pregnancy miscarriage which are based on the ages of the pregnancy, those are:<sup>2</sup> *abortus*, it is for pregnancy miscarriage before week- 16<sup>th</sup>; *partus immaturus* is for pregnancy miscarriage on week- 28<sup>th</sup>, *partus immaturus* is the birth of the infant before its time. The contradiction of these infant age boundaries which is aborted are not focused in this literature, because the focus of the discussion is limited on the abortion based on ethics and moral perspectives related to the certainty of abortion in the Law product.

The Medical Ethics Code of Indonesia (KODEKI) and Indonesian Criminal Code (KUHP) prohibit an abortion. *The Law on Health No.23/1992* which has been replaced with *Law on Health 2009* No. 36/2009 basically prohibit an abortion, and an abortion can be done with some certainties. This ethics research is observed based on general ethics, and it is also related to the ethics of Doctoral profession, because The Law on Health 2009 only determines the doctors who are allowed to do the abortion.

An abortion which is done intentionally (*abortus provocatus*) can be legal or illegal depends on The Law of a country where those Law regulates this case. An abortion that is done intentionally because of medical reason (*abortus provocatus medicalis*); and an abortion which is done intentionally for the non-medical reason can be categorized as a crime (*abortus provocatus criminalis*); besides, there is also known an abortion which is done because of social reason.

*Abortus provocatus medicalis* is stated that it is legal in France and Pakistan; abortion because of social reason is legal in Swedia, England, and Yugoslavia;<sup>3</sup> while Indonesia stated that *abortus provocatus medicalis* is legal since Law of Healthy 1992 are made. Indonesia Criminal Code (KUHP) does not give the certainty exception of abortion act, in other words abortion is equal with *abortus provocatus criminalis*. Before Law on Health 1992 are made, abortion was done to save the mother's life because there was a medical indicated, based on SK Health Ministry.<sup>4</sup>

Indonesia Criminal Code (KUHP) determines that abortion is illegal act without any exception,

<sup>1</sup> CB. Kusmaryanto, SCJ, *Kontroversi Aborsi*, (Jakarta, Grasindo, 2002), hlm. 12.

<sup>2</sup> Njowito Hamdani, *Ilmu Kedokteran Kehakiman Edisi Kedua*, (Jakarta, Gramedia Pustaka Utama, 1992),207-208.

<sup>3</sup> Sofwan Dahlan, *Ilmu Kedokteran Forensik Pedoman Bagi Dokter dan Penegak Hukum*, (Semarang, Badan Penerbit Universitas Diponegoro, 2000), hlm. 32.

<sup>4</sup> Njowito Hamdani, *op.cit.* hlm. 206.

explained in Acts 299<sup>1</sup>, 346, 347 and 348. Acts 346, 347 and 348 under chapter XIX about The Crime on a Soul; while Act 299 under chapter XIV about Moral Crime. Abortion regulation in Indonesia Criminal Code (KUHP) especially Book II about Crime indicates that abortion act is a criminal or called as *abortus provocatus criminalis*, without any exception. So, Indonesia Criminal Code (KUHP) determines abortion crime tightly, but it does not give the age boundaries of the pregnancy which are prohibited to be aborted, but it differs the abortion and the murder of the infant at the time of its birth or not longer after it is born (determined in Indonesia Criminal Code/KUHP Acts 341 and 342).

The development of medical technology or the modern doctoral equipments give a lot of chance to detect the condition of the fetus in the womb earlier. The *ultra sono grafi* (USG) can know, detect, analyze, and monitor the fetus development since the beginning of its growth, so the condition of the fetus can be monitored earlier, including if the fetus is in the congenital malformations.

Law on Health 2009 which was legalized on October, 13<sup>rd</sup> on 2009 which was included on State Gazette on 2009 No. 144, decided that the conditions of abortion are in Acts 75, 76 and 77; while the criminal sanctions of the crime/ violation of the abortion conditions were included in Act 194, those are Laws that give the law protection for the prevailing of abortion norms in Indonesia.

The abortion norms that were legalized in Law of health on 2009 are different with The Law of Health on 1992. The norms of Law on Health 2009 have wider scopes in determining the abortion acts; while Law on Health 1992 determined the abortion in Act 15, it can be determined with tight requirements, which are only used to safe the life of the pregnant mother and/ the fetus.

Basically, an abortion is forbidden in Law on Health 2009 Act 75, but an abortion can be done if it completes those conditions:

- The indication of medic emergency which is detected since the earlier pregnancy, which threaten the safety of the mother and/ the fetus, suffering severe genetic diseases and congenital malformations, which cannot be cured and finally make the fetus cannot alive outside the womb; or
- A pregnancy as the impact of a rape that causes psychology trauma for the victim.

*Based on the certainty of positive law (The Law on Health 2009), explanation in the below is the observation related to morality as has been explained above, and in its turn strategy issues emerge as the Law issue, that is: don't the law on health 2009 which legalizes an abortion in Indonesia contradict with the moral values?* This law issue emerges, because it is known that Law controls the action, which the purpose is to conduct the tranquility and the composure in society; while the purpose of morality is to organize the spiritual actions.<sup>2</sup>

Besides, based on the aspects of medic technology development which is the part of knowledge development, the equipment invention that has an ability to detect a fetus has legalized an abortion which is not only related to the view of Law, but also related to moral and ethics views (even the view of religion). This case reminds us that basically there must be the boundaries of moral and amoral from each individual, in a short and simple term it is called "not included to Law Business".<sup>3</sup> According to Immanuel Kant,<sup>4</sup> morality is a faith and a spiritual attitude, and it is not only a thing that is related to the way we adapt ourselves to the world, not only the State rules, customs or religion, so it can be said that obeying the rules does not guarantee the quality of moral. So that, the abortion legalization on Act 75 Law on Health 2009 will be observed based on the Law aspect, ethics aspect and moral aspect which are the research focuses in this literature.

## 2. Research Methods

Research is the way to solve an issue, and the issue of this research is a legal issue. This research used the normative legal research<sup>5</sup>. The research of normative legal is a sort of research which observes and analyzes

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<sup>1</sup> Article 299 of the Criminal Code (KUHP) is formal offense in the criminal law, which prohibits certain acts of the perpetrator without the need of its act effect; because the forbidden point in formal offense is the action.

<sup>2</sup> Eugenius Sumaryono, *Filsafat Hukum Sebuah Pengantar Singkat*, (Yogyakarta, Universitas Atma Jaya, 1986), hlm 23.

<sup>3</sup> H.L.A. Hart (Penerjemah: Ani Mualifatul Maisah), *Law Liberty and Morality, Hukum Kebebasan dan Moralitas*, (Yogyakarta, Genta Publishing, 2009), hlm. 20.

<sup>4</sup> Franz Magnis Suseno, dalam S.P. Lili Tjahjadi, *Hukum Moral Ajaran Immanuel Kant tentang Etika dan Imperatif Kategoris*, (Yogyakarta, Kanisius, 1991), hlm. 11.

<sup>5</sup> Johnny Ibrahim. *Metode Penelitian Hukum Normatif*, Bayumedia, Malang Jawa Timur. 2006.h.48.

Normative Legal Research (*de beoening-het de bedrijven*) was conducted to prove the following: (1).are norms that are in positive law provision in law practice have been already appropriate or have it reflected the legal principles that want to create justice? ; (2). If the law provision is not the reflection of the legal principles, then is it a form of the concretion of legal philosophy? ; (3). Are there any new legal principle as the reflection of the exist law values? ; (4). Is the idea of the law regulation will be a certain action that is based on the legal principle, legal theory, or law philosophy?

the legal substances which have been collected. To solve the legal issue which is used as the issue, some kinds of approaches will be used, those approaches are: *statute approach*, *conceptual approach*, and *moral approach*.

The statute approach is used to observed and analyze Law which substantially organizes the abortion matter. Those Laws are: Law on Health (both the previous regulation and prevailing regulation) and Indonesia Criminal Code (KUHP). This statute approach specifically not only see the shape of the statute regulation, but also analyze the content of the substance, the ontology basic of how those Laws are created, the philosophy basic of Law and the ratio *legis* of the Law certainties. Conceptual approach is used to find the Law Bachelors' views and also the doctrines which are developing in legal field. The legal principles will be found through the analysis of Law Bachelor' views and the doctrines, and it can be used to analyze the juridical concepts that are related to the validity as abortion legality. While the *moral approach* is used to find the basic of moral values as the foundation that can be used as the legal hint, in this case statute regulation is as the parameter of the abortion legality.

### 3. Result and Discussion

#### Abortion legality based on Law on Health in Indonesia by Concerning the Moral Aspect.

The pro and contradiction of abortion in the world were started when there were the differences of opinions in determining the beginning of life. One of the reason of supporting the abortion is that women have rights to decide something that is going on their bodies, and to decide by themselves something that they want and something that they do not want. Fetus is regarded as the part of their bodies so that's why it can be separated from them. The life right of the fetus is defeated by the right of choosing what they can be (autonomy) and the right of woman freedom.

While the reason of opposing the abortion based on the consideration that fetus has had a life since the process of fertilization<sup>1</sup>, it means that the fetus will be a human who have a right to get its life. In detail, Law on Health 2009 determines the abortion matters as following statements:

- Act 75:

- (1) All of individuals are not allowed to do the abortion.
- (2) Those prohibitions which are stated on Clause (1) can be an exception if:
  - a. There is an indication of medical indicated which is detected since the earlier age of the pregnancy, both something that threatens the safety of the mother and/ the safety of the fetus, the fetus that suffered from severe genetic diseases and congenital malformations, or something that cannot be cured and trouble the fetus to be alive outside the womb; or
  - b. A pregnancy as a result of a rape that can give psychologist trauma effects to the victim.
- (3) The act as has been explained on clause (2) can be done after doing the consultancy through the counseling and/ or the advisor of pre- abortion and the process is end by the counseling post-abortion that is done by a competent counselor who in charge in this field.
- (4) Further medic conditions and rape medical indicated as explained on clause (2) and clause (3) are arranged in government regulation.

- Act 76:

An abortion as explained in Act 75 only can be done:

- a. The age of the pregnancy is less than six weeks, counted from the first day of the last period time, except something that related with medical indication.
- b. by an expert who has competency and who is in charge and has certificate which has been legalized by Ministry.
- c. by the approval of the pregnant mother that is concerned in this case.
- d. by the approval of her husband, except she is the victim of a rape; and
- e. Provider of sanitation service that fulfills the requirement which is determined by Ministry.

- Act 194:

Every individual who do the abortion intentionally and does not follow the certainties above, explained in Act 75 clause (2) will get jail punishment with the longest time is 10 years and has to pay fine as much as Rp.1.000.000.000,00 (one million rupiahs).

To make the discussion easier, the investigation which is based on the abortion requirements on Act 75 about Healthy 2009 is explained systematically, those are:

#### (1) An abortion for indication of medical indicated.

The requirement to do the abortion based on Laws Act 75 on Healthy 2009 are: the indication of medical emergency that can be detected in the early age of the pregnancy, something threatens the safety of the

<sup>1</sup> This process also called as fertilization or conception.

mother and/ or the fetus as well. The medical indication in this case is a condition that really have to be taken to stop that pregnancy, and if this action does not do so it will threaten the life of the mother. The pregnancy which threaten the life of the mother is more considered to save the life of the mother than the safety of the fetus, it can be accepted according to the principle of *legitimate defense*.<sup>1</sup> In this case there will be two options, saving the life of the mother or saving the life of the fetus. Saving the life of the mother is more important than its fetus and this choice is the right decision based on moral and ethics view, the choice is supported because the mother is the one who live longer than the fetus itself so that's why the mother have right to live more than the fetus.

If we sacrifice the expectant mother it means that we take the living right of her indirectly. The example case, a mother has already had two children. In her third pregnancy she gets some problems which threaten her life, the only way to save her life is by doing the abortion. This solve is chosen considering that she still has two other children that have to be kept alive. So in this case, the purpose of the abortion in saving the expectant mother can be judged as the right action according to moral and ethics view.

While an abortion which is done because the fetus suffered from severe genetic diseases and congenital malformations, and it cannot be cured and causes the fetus cannot be alive outside the womb well, still need to be discussed further based on the moral and ethics view. The utilization of medical technology as the result of knowledge development is limited by moral and ethics view. This is also supported by the Medical ethics Code which has already begun since the era of Hipocrates, the priority of the doctoral profession implementation is to save human life and oriented for human beneficial. The profession ethics itself has an understanding that:<sup>2</sup>

Responsibility and ability that emerge from conscience and reason to fulfill the need of professional service with seriousness and accuracy and the assembly of expertise, proficiency, and scientific to do the society responsibility to the society who needs help. Profession ethics has for main basic rules:

- a. profession has to be seen and understood as a service which does not hope some profit. (*disinterestedness*);
- b. refer to the interest and the noble values as the critic norms that give motivation to manner and attitude;
- c. oriented to the society as the whole nation;
- d. solidarity spirit among colleagues in the same profession which attend to keep the quality and the dignity of the profession.

The explanation of profession ethic is described in profession ethics code which is as a tool of the arrangement for concrete behavior of the profession doer. KODEKI as long as it arranges the certainties related to an abortion is determined in Act 10, stated that "all of doctors have to remember their responsibility to protect the life of the living things". In KODEKI which was established by IDI, explained in the description Act 10, that a doctor is not allowed to do *abortus provocatus* and *euthanasia*, and in the other explanation it was said that *abortus provocatus* can be done as the medical action if it is the only way to save the life of the expectant mother. (*abortus provocatus therapeuticus*).<sup>3</sup>

Act 11 KODEKI decided that: every doctor has to uphold, appreciate, and implement the Doctor Vow. Related to the case of abortion, on the Doctor Vow number 9 stated "I will respect every living thing from the process of its fertilization".

The certainties on KODEKI and The Doctor Vow clarify that Doctors in Indonesia are not allowed to do the abortion because every doctor has responsibility to protect the individual since its fertilization process. Related to the case of a fetus that suffered from severe genetic diseases and congenital malformations and cannot be cured and make that fetus cannot survive outside the womb. According to KODEKI and The Vow of Doctor Profession which stated that they have to respect every living individual since its fertilization process, so the abortion because of suffered from severe genetic diseases and congenital malformations cannot be agreed.

Thus, doctors are not allowed to do the abortion, this statement emerged because the spiritual/ soul matter is not the business of medical or biological field, and the matter of medical and biological field is the physical life of a human that is started since the fertilization process; while the spiritual matter is a theology matter which is related to religion,<sup>4</sup> and in in Islam an abortion is forbidden. If we relate with theology aspect, religion is the theology implementation to morality, and morality emerged before the religion.<sup>5</sup> From the religion aspect, An abortion because a fetus suffered from congenital malformations cannot be agreed, and this case has to be studied further and specifically.

<sup>1</sup> CB. Kusmaryanto, SCJ, *op.cit.*, hlm. 162.

<sup>2</sup> B. Arief Sidharta, Bahan Kuliah Teori Hukum dan Ilmu Hukum pada Program Doktor Ilmu Hukum-Universitas Diponegoro 2009/2010, dalam Bab *Etika Profesi*, hlm. 8-9. Tidak dipublikasikan.

<sup>3</sup> Chrisdiono M. Achadiat, *Dinamika Etika dan Hukum Kedokteran Dalam Tantangan Zaman*, ((Jakarta, Penerbit Buku Kedokteran EGC, 2004), hlm.165.

<sup>4</sup> CB. Kusmaryanto, SCJ, *op.cit.*, hlm. 108.

<sup>5</sup> S.P. Lili Tjahjadi, *Hukum Moral Ajaran Immanuel Kant tentang Etika dan Imperatif Kategoris*, (Yogyakarta, Kanisius, 1991), hlm. 56.

From the moral aspect, an abortion because of congenital malformations cannot be agreed, because according to Emmanuel Kant, the purpose of morality is “the highest kindness” (*summum bonum*), and it means “a perfect happiness” and “the highest kindness” is never reached perfectly because of the crime<sup>1</sup>. Generally every individual has a fear of having a defect baby born. The difficulty of raising a defect child becomes a burden for each family. Children with disabilities in physically or mentally are regarded that they are not happy rather than other normal children. This is a discrimination between the normal individuals with those disable individuals. While a discrimination in every kind of situation and condition cannot be agreed.

Normatively, it is difficult enough to determine objectively the boundaries where a fetus has been already judged suffered from severe genetic diseases and congenital malformations as explained on Law act 75 on Health. Thus, related to an abortion of a fetus that suffered from severe genetic diseases and congenital malformations, where it is in helpless position to choose being born or being killed, does not those individuals have rights to be born and to have alive? in the context of abortion matter, the disable individuals have rights to demand that defect fetus deserve to get living rights as normal fetus’ living rights<sup>2</sup>, this condition is similar with the condition where those disable individuals demand to get the equal treatment as the treatment that is gotten by the normal individuals.

## (2) An Abortion to The Pregnancy of Rape Victim

Women who become rape victims passed the most terrible moment in their life. Generally, they suffer physically, psychologically, and socially. The social stigma that emerges as the result of the rape case is the burden of the victims, besides the private problem because of physic and psychological violence that they got from the forcible intercourse

The pregnancy because of the rape rarely happen, but there is still the possibility of this condition. Everyone absolutely does not want to be pregnant because of the rape, and the pregnancy that is not expected by anyone will give bad impacts to the expectant mother and her fetus too. The pregnancy because of the rape can be avoided medically, because there is still some times since the ejaculation process and the fertilization process. Prevention of the conception process still can be done, for instance: using *spermicidal* to kill the sperms of the rapper or drinking the hormone medicine to prevent the ovulation.<sup>3</sup> Consuming *Emergency Contraceptive Pills (ECP)* will be effective in preventing the unhoped pregnancy if it is drunk in less 72 hours after the time of the rape.<sup>4</sup> In fact, not all of the victims report the accident that happened to them, because of some reasons, for example: afraid of the threatening of the roper, shame, psycis trauma, etc. Besides, not all of the doctors want to give the *Emergency Contraceptive Pills (ECP)*.

Decision of doing the abortion as the result of tindak pidana perkosaan is not a wise decision, but as the reaction of the ripe crime as explained in Act 75 Law on Health 2009. But in the condition of severe psycis trauma, it is worried that the victim will suffer severe mental disorder, thus the abortion can be done as the solve to save the soul of the victims. It is necessary to involve psychologist to decide the condition of victim psyches post- the rape whether the victims get severe psyches trauma or do not.

The main issue that legalizes the abortion of the result rape criminal law is the psychology aspect, that is the trauma impact of the enforced sex which is done by the rapper and effect psychology burden, and another worries is if the child is similar physically with the rapper. If the pregnancy because of the rapper is as the cause of psychology reaction, so the psychology therapy can be done as the alternative way to solve it.

Generally, psychology trauma as the impact of the rape are guilty, fearness, and also unconfident feeling. Thus, their families and anyone who truly cares of the victims can assist them intensively.

Principally, A rape is a crime that destroys a life, whether physically, psychologically or even socially. Being the rape victim is something that will never be forgotten by her and it cannot be healed by doing the abortion, if she is pregnant. But, doing the abortion to the rape victim as similar with doing the crime to unsin woman, it is because an abortion is always related and directly connected to the expectant mothers and the death of the living thing. Then, a question emerged, do women of the rape victims always want to do the abortion?

The purpose of the abortion of the rape victims is actually supported by the consideration of the victims’ willing to forget the accident, by throwing away the evidence of that crime. The existence of negative stigma as the rape victims strengthen the willing of the victims to do it, they will be in difficult position, between the choices to do the abortion or let the fetus being alive. The opinion, attitudes, and trust of the families and societies or even people around the rape victims often make them hard to choose the other option, only doing the abortion to throw away the evidence that comes up in their minds. Besides, being afraid of giving a birth as the

<sup>1</sup> *Ibid* hlm. 55.

<sup>2</sup> K. Bertens, *Aborsi Sebagai Masalah Etika*, (Jakarta, Gramedia Widiasarana Indonesia, 2002), hlm. 48.

<sup>3</sup> <http://www.aborsi.org/artikel7.htm>, diakses tanggal 28 Januari 2011.

<sup>4</sup> Suryono Ekotama, dkk., *Abortus Provocatus Bagi Korban Perkosaan Perspektif Viktimologi, Kriminologi dan Hukum Pidana*, (Yogyakarta, Universitas Atma Jaya, 2001), hlm. 191.

crime impact becomes the burden for them.

An abortion can give a new issue, it can be as the psychology trauma in the victim life for further days. An abortion does not help the victims to heal the rape trauma, because the abortion itself can give inner hurt that will give more suffer to the rape victims. The suffering of the victims will be more severe if the pregnancy itself is aborted, because they will not only suffer because of becoming the rape victims but also trauma as the impact of the abortion. An abortion will give guilty feeling to the victims and this feeling will not be easily gone out of their life. The Psychology term is called as *post-abortion syndrome* (sindrom pasca-aborsi).<sup>1</sup>

Besides the disruption in psychology health, the physical disruption also will be gotten by the victims. On a book entitled "*Facts of Life*" written by Brian Clowes, it is said that physical effects of the abortion are: Sudden death because of severe bleeding or the failure of the anesthesia, slow death because there is severe infection around the womb, (*uterine perforation*), (*cervical lacerations*) that will cause the defect to the next child, cannot have another inherit (*ectopic pregnancy*), etc.<sup>2</sup>

Considering the dangerousness of an abortion, even physically or psychologically, thus it has to be considered more to do the abortion. To keep the pregnancy that does not danger the life of the mother directly is a better alternative, which can be done as the psychology process is done, this psychology process is done to recover the trauma as the impact of the rape and the pregnancy itself. Thus, an abortion consideration is not the best solution to solve the issue

In handling the rape victims, the psychological therapy has to be the priority, it will not only support their physic health but also their mental and spiritual health. The recovery process of the victims depends on that psychological trauma itself.

Can a woman of the rape victim who is going to do the abortion prove that her pregnancy is the impact of the rape? This case need more investigation medically and also juridical, it is related to Act 285 Indonesia Criminal Code (KUHP) that regulates the law of someone who do the sexual intercourse violently to a woman that is not his wife, so they will get the criminal punishment of being jailed with the longest period is twelve years.

The medic physic investigation which is the first proof of the sexual violence as explained on act 285 Indonesia Criminal Code (KUHP) should be found to prove the truth of the rape crime. Besides, the psychological examination also can support the result of physic examination. If the investigation is not done accurately, then in its implication there will conduct the misuse of the regulation on Act 75 Law on Health 2009 to do the abortion to the woman who is not the rape victim.

The requirements to do the abortion based on Law on Health Act 75 2009, are done after the victim gets the counseling and/ advisement of Pre- Abortion and ended by counseling post abortion which will be done by the competent counselor who is in charge in that case. Moreover, the pregnancy age that can be aborted is determined, it has to be less than six months since the first day of period ends.

The procedure to do the abortion does not regulate further, it only regulates the procedure before the abortion which is started by the counseling process. For that process, is it necessary to prove that the pregnancy is the impact of the rape? So then, the verification of the approval of an abortion based on The Law on Health Act 75 2009 cannot be regarded as the truth through the court, but it is only the beginning process in the level of investigation or prosecution. This is related to the pregnancy age (six months counted since the first period day) as the condition of an abortion action. Or the truly truth based on the criminal law as the basic of doing the abortion according to Acts of Law on Health 2007 does need some investigation first? Is it necessary to propose the investigation first as the requirement that has to be fulfilled before doing the abortion? This situation need more intention in the implementation, because beside to avoid the misused of the certainty of Act 75 Law on Health 2009, it also to execute the selective way in approving the abortion, especially to the rape victim.

### (3) Abortion on Moral Perspective

Ethics and moral have the same meaning, (*custom*) or (*way of life*). Both of those are related each other so when people talk about ethics they have to talk about moral too, and when people talk about moral they talk about ethics too. But the terminology of 'moral' refers more to *refer to the conduct itself* that is related very well with the value of right and wrong, or the value of goodness and badness. Moral is a term that is often related with ethics, those have the same connotation with the judgment of bad and good assessment according to B. Arief Sidharta, adalah:<sup>3</sup>

Reflection ( basic thinking ) of responsibility behavior, that is done by human, ethically it is as ideology discipline, think how some attitude can be regarded as responsible behavior or does not, can be explained why that has been done or it has to be done. Those standards emerge from the inner and mind

<sup>1</sup> <http://www.aborsi.org/resiko.htm> diakses tgl 28 Januari 2011.

<sup>2</sup> *ibid*

<sup>3</sup> Bahan Kuliah Teori Hukum dan Ilmu Hukum pada Program Doktor Ilmu Hukum-Universitas Diponegoro 2009/2010, dalam Bab *Etika Hukum*, hlm. 6. Tidak dipublikasikan.

of human, and they are interacted each other with the reality in society. Thus, the implementation of concrete ethics are, moral principles and its implementation way (inner attitude and the society behavior), until some values are bounded each other and influenced by some changes that happen in one dimension.

The synonym of ethics is *morals*,<sup>1</sup> and those words have the same etiology. Ethics is from Greek “*ethos*” means *customs*, while based on Latin language, moral is derived from the word “*mores*” also means custom. But etiology is not enough to be a good guidance to understand its function modernly and not enough to understand the philosophy of ethics as the classic philosopher creation.

Based on opinion above, we can notice that the relation between ethics and moral is so tight, because the concrete implication of ethics is moral as the basic in conducting certain action. Moral is explained as advice, sermon, standard, a group of rules and determinations, both written or orally that consists of the way of human life to be a good individual.<sup>2</sup> Thus, it is so difficult to separate moral and ethics, because in some terms have values that complete each other. Moral is a value concept while ethics is behavior concept. The value concept bases the behavior value until an action is conducting at the end.<sup>3</sup>

Ethics is as a knowledge that seeks the orientation as the human effort in answering the fundamental question “How do I live and how do I act”. This is the point that makes ethics studied kinds of behavior, is a behavior good enough to be conducted or not. The area of ethics or morality, began from the fact that human not only conduct some actions but they also have to judge their action.<sup>4</sup> According to ethics in philosophy discipline point of view, it is said that some action can be said as responsible act if we assess it from the reason why that action is conducted or has to be done. Those standards emerged from the conscience and the human logic and those are interacted each other with the society fact, so that is why ethics and its thinking product are influenced by religion, the view of life, culture, civilization and the reality in other society. In conclusion, the concrete implication of ethics is the moral principles and the way of its application (inner action and the behavior of society), until in certain degree they are connected each other and are influenced by the changes which is happening in certain space and dimension.

Ethics and moral are the guidance to decide the value or the measure of a good life. Moral discusses the right thing and the wrong thing from the deepest aspect (philosophy), while ethics analyzes is the action has to be done or it is good or bad to be conducted by human according to the rational and critical analysis on moral view.

Related to the abortion which is actually created from the argument of when a life of individual begins, those are the opinions that refuse and support the abortion, is a fetus can be said as human? A few researches stated that a fetus is a human which is still in the form of blood, and in its process it will transform into human being,<sup>5</sup> and based on the vow of Hipocrates, the father of modern doctoral, stated that a doctor will always respect a life since its fertilization process. That statement is always stated in The Doctor Vow, it reflects that doctor is a noble profession that its knowledge or human being.

Scientifically, since the sperm meets ovum and chromosome fusion happens, a new life is born since that process. If the multiplication process is not interrupted, in the end it will be born a new human being in the world as a creature of God the Almighty. This human being will conduct a lot of useful behavior for her/himself, for the family and parents, society, the world and God.

Fetus is a prospective human that is from the agglomeration blood, and it will change as long as its progress process. From that statement, it can be concluded that an abortion is a murder of prospective human being violently by the human, which is actually creating or taking the life of human being is the right of God.

From the aspects of ethics and moral emerged a question, is the rape victims will hate their own child although it is the impact of the rape? Basically every woman in the world is born with the gift of maternity instinct, and in the deep of their heart they have instinct to love their children. Freedom to take decision to born the child because of the rape is a wise choice which is too difficult to take, it is a wise choice because this solve the crime in good way. The rape itself gives psychology burden for the victims, but keeping the pregnancy is a marvelous choice because by keeping its pregnancy the victims will take the responsibility of all the risks, started by fear and ashamedness.

Morally, keeping the pregnancy of the rape crime is the victory from the evil, because basically morality is always connected to conscience of human being, that is the decision to choose the action and that action itself is based on its consideration result. The responsibility to act morally is a conscience responsibility

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<sup>1</sup> *Bahan Kuliah Filsafat Ilmu PDIH-Undip 2009/2010, Robert G. Olson dalam Bab Masalah-masalah Etika, hlm. 21-22. Tidak dipublikasikan.*

<sup>2</sup> Magnis Suseno, *Kuasa dan Moral*, (Jakarta, Gramedia, 1988), hlm.14.

<sup>3</sup> Alexandra Indrayanti Dewi, *Etika dan Hukum Kesehatan*, (Yogyakarta, Pustaka Book Publisher, 2008), hlm.21.

<sup>4</sup> Nurani Soyomukti, *Pengantar Filsafat Umum*, (Yogyakarta, Ar-Ruzz Media, 2011), hlm.209.

<sup>5</sup> <http://www.aborsi.org/artikel2.htm> diakses tanggal 28 Januari 2011.

which is personality matter, thus moral and religion fields are taken principally from the nation juridical.<sup>1</sup>

Rape crime basically is the biggest unfairness which is through by the victims, but this crime will be bigger and heavier if the pregnancy is aborted. New abortion regulation that was legalized on Act 75 Law on Health 2009 has to be done tightly and carefully in its implementation by considering ethics and moral. It is because Law is always connected by physical manner, thus it also has physical responsibility, and some opinion of human being is not paid attention by Law.<sup>2</sup> This statement is appropriate with the Roman Law slogan *de internis non iudicat praetor* (stated that the inner life would not be judged).

On Law, ethics, and moral perspectives which are oriented on Goodness of the living order of human make the abortion cannot be agreed. Related to Law on Health 2009, especially Act 75 refers to the opinion of Ad. Peperzak, about Law and Morality, that the fundamental analysis level in determining the goodness and the badness of Law or Law system is in moral analysis. Philosophy field which studied the category of moral level was ethics.

Good understanding in moral view is wider concept than the justice understanding in moral view.<sup>3</sup> Thus, the regulation of abortion legalization on fetus with congenital malformations and fetus of rape accident basically contradicts with ethics and morality, although it can be agreed from the aspects of positive law (based on Law especially on health 2009), but on moral view the norm substances are still questionable, why does the living right of the fetus as the prospective human being must be taken away, while the fetus itself cannot choose the way of its creation in this world?

Principally, the abortion is done by women who are in chaos situation, they are confused and worried of their pregnancy and this situation gets worst by the compulsion and threat from people around them. Thus, the abortion decision without think first its risk will lead astray, because an abortion has high risk, both for the health of the victims or even the safety of them. The physical and psychology aspects are not considered, including the life of the victims who are constrained to do the abortion or even the victims who do the abortion enforcedly. *Post-abortion syndrome* which is caused by the abortion can happen in sudden time and emerge again in another time. Running away from the fact and under pressure situation because of the abortion will not be easily avoided or forgotten. Guilty and regretful feeling will emerge if the victims who did the abortion cannot have another pregnancy in the future.

It is true that the Ethics source cannot be separated from the existence of norms, while the strength and weakness of the norms depend on the option (subjective option) of that human and human will conduct the action that she/he need. After doing the abortion, one think that has to be considered is the life of the victims that choose abortion and the way they forget that abortion. Denying the reality of life, under pressure situation to forget their memories of the abortion can be done for a while, but woman needs strong motivation to do those affords.

#### 4. Conclusion

As the explanation above, it can be concluded that an abortion according to Act 75 Law on Health is prohibited, but an abortion can be the exception if: 1) Medically Indicated; 2) fetus suffered from severe genetic diseases and congenital malformations; and 3) as an impact of the rape.

From those three exceptions of prohibition to the abortion, an abortion for the pregnancy that threatens the life of the expectant mother and the fetus can be agreed from the ethics and moral perspective; while the abortion for fetus suffered from severe genetic diseases and congenital malformations cannot be agreed from the ethics and moral aspects; and the abortion for the victims of rape only can be done if the impact of the rape dangers the psychological safety or give tremendous trauma to the victims.

Considering the effects of the abortion, that is not only related to the aspects of moral, ethics, religion, and law but those effects also give disadvantages to physic and psychology to victims, thus to do the abortion it has to be considered further. Besides, the implementation of Act 75 Law on Health 2009 that will be arranged further in the government regulations has to make some tight requirements, so there will not be an opportunity for irresponsible abortion.

#### 5. Recommendation

Based on research and analysis in order to answer the law issues above, then as the recommendation in this research is that based on moral and law aspects the certainty in legalizing the abortion on Laws of Health for fetus suffered from severe genetic diseases and congenital malformations; and also as an impact of the rape have to be removed. An abortion only can be accepted for emergency medical Indication.

<sup>1</sup> Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah*, (Yogyakarta, Kanisius, 1982), hlm.75.

<sup>2</sup> *Ibid.*

<sup>3</sup> Bahan Kuliah Teori Hukum dan Ilmu Hukum pada Program Doktor Ilmu Hukum-Universitas Diponegoro 2009/2010, dalam Bab *Etika Hukum*, hlm. 2. Tidak dipublikasikan.

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