

CHAPTER I

INTRODUCTION

1.1 Background

Pregnancy is certainly a gift and a desirable thing for couples who want to have offspring. Although some couples couldn't wait for the baby to arrive, not all pregnancies bring happiness to everyone. Pregnancy may cause anxiety, stress, and pressure for some situation, one example is for unprepared pregnancy. Unprepared pregnancies can be caused by many things, but this thesis will focus more on unprepared pregnancy from both married and unmarried couples. For unmarried couples, promiscuity, lack of awareness of the dangers of free sex, unprotected sex plays a very big role in unwanted pregnancy cases. Most of the time, if both male or female partner refuse to take responsibility the pregnancy usually ended in an illegal abortion act.¹ In married couple, the act of irresponsible decision usually occur where the couple decided to not use any protection even though they know they could not afford or not ready to have children.

Pregnancy outside of marriage naturally viewed as a negative thing. In Indonesia, pregnancy outside of marriage contradicts the moral order of Indonesian society, as pregnancy before marriage is widely considered a social taboo among

¹ Suhayati, Monika, and Noverdi Puja Saputra. "Permasalahan Penegakan Hukum Tindak Pidana Aborsi." *Berkas.dpr.go.id*, Oct. 2020, berkas.dpr.go.id/puslit/files/info_singkat/Info%20Singkat-XII-19-I-P3DI-Okttober-2020-241.pdf

Indonesian society.² This encourages someone to carry out Illegal abortion act against the Abortion Law in Indonesia to eliminate family disgrace. Another reason that could encourage someone to have an abortion is the slow economic growth in Indonesia which usually affects the less fortunate family. The Indonesian economic growth in 2018 has indeed increased by 0.10% from 2017. However, the increasing or recovering rate is not in line with the desired expectations by the government and is not evenly distributed throughout Indonesia.³ Indonesia's slow economic progress has caused many people to experience financial difficulties. This may be one of many reasons why a person cannot continue with their pregnancy and decided to have an abortion. Unprepared pregnancy certainly played a very big role when it comes to abortion. In 2018, the *Badan Pusat Statistik (BPS)* noted that 1.9% of teenage males and 0.4% of teenage females have had sexual intercourse before marriage, counting only in Central Java. Although not all sexual intercourse resulted in pregnancy, most case where it does occur, both perpetrator doesn't have any knowledge or education regarding protected sex. BPS mentioned that the percentage of sexual activity before marriage tends to be greater in urban areas than in rural areas⁴ where again, most cases resulted in illegal abortion.

² Institute, Guttmatcher. *Aborsi di Indonesia*, ser. 02, 2008, p.4.02, www.guttmatcher.org/sites/default/file/report_pdf/aborsi_di_indonesia.pdf.

³ Kementerian Kesehatan Republik Indonesia. "Profil Kesehatan Indonesia 2018." pusdatin.kemkes.go.id, 2019, pusdatin.kemkes.go.id/resources/download/pusdatin/profil-kesehatan-indonesia/PROFIL_KESEHATAN_2018_1.pdf.

⁴ BKKBN, "GAMBARAN KESEHATAN REPRODUKSI REMAJA." BKKBN, 17 Sept. 2020, jateng.bkkbn.go.id/?p=1551

Over a period of time, technological tools used to perform safe abortions has been developed and observed so that abortion can be performed in the safest way with as low risk as possible. Cases of safe abortion usually recommended by a team of doctors for certain reasons such as to save the life of the future mother. Although it is called safe abortion and done by team of medical doctors it can still result in long-term illness or even death which usually known and discussed by the medical team with future mothers who is going to have an abortion. In other cases, people who don't fulfill abortion qualifications can't have access to safe abortion and decided to risk their lives to carry out an illegal abortion as the only way out.

Abortion in Indonesia is regulated under Kitab Undang Undang Hukum Pidana (Indonesian Criminal Code) which regulates the punishment for anyone who terminates or help to terminate a baby specifically in article 346 – Article 349, Government Regulation No 61 of 2014 regarding Reproductive Health (Reproductive Health Law) which regulates certain conditions where an abortion can be declared legal specifically in article 31 dan 32, Regulation of the Minister of Health No.3 of 2016 regarding Abortion Training and Implementation of Medical Emergency Indications and Rape-Caused Pregnancy (Abortion Training Law) specifically in article 1 that states the definition or understanding of abortion and training for abortion, and Lastly is Law no 36 of 2009 regarding Health (Health Law) specifically in article 75 - 77 and Article 194 which regulates the certain indications of abortion in detail. This rules and regulations has been applicable in

Indonesia. However, the number of Illegal abortions in Indonesia continues to increase every year which eventually may impact Indonesian society.

Abortion law in Indonesia is based on the Indonesian Criminal law which regulates penalties for perpetrators who perform abortion act and those who assist in carrying out abortion act. The Indonesian Criminal Code act as the base for all Abortion laws and regulation applied in Indonesia. Indonesian Criminal Code states that abortion is considered a criminal act that has sanctions and penalties for the perpetrator. Even though abortion is considered as a criminal act in the Indonesian Criminal Code, regulation in Health Law and Reproductive Health Law act as a guideline where abortion can be declared as legal only if it follows the indicators released in the Reproductive Health Law and in the Health Law. Under article 31 (1) of the Reproductive Health Law Abortion is declared to be legal if:

- (1) The act of abortion can only be performed based on:
 - a. indications for medical emergencies; or
 - b. pregnancy due to rape

The Health Law specifically in Article 75 - 77 describes the indicators of medical emergencies referred to in article 31 (1) of the Reproductive Health Law where Article 75 – 77 of the Health Law will be the main legal material in this thesis. If the abortion has been approved by a team of doctors, meets the indicators listed, then the future mother may carry out an abortion legally and safely.

Even though Indonesia already have laws and regulation regarding abortion, the reality in Indonesian society is illegal abortion is still increasing every year. Legal analysis on Abortion Law in Indonesia has been written by Savina Wibowo in 2018 titled “Legal Analysis on Abortion Under Indonesian Law”. Savina Wibowo’s thesis is about analyzing that there are conflicting laws between *Kitab Undang-Undang Hukum Pidana* and *Kitab Undang-undang Republik Indonesia No 36 of 2009* regarding Health. This thesis will be different from Savina Wibowo’s thesis. According to the author’s point of view, Indonesia has strict abortion law specified in Article 75 of the Health Law because it can only be done under certain conditions.

This thesis will discuss on how can this strict abortion law in Article 75 of the Health affect the Indonesian society using existing data regarding unprepared pregnancies, illegal abortion, Maternal Mortality rate, and violence against women and children specifically on child abandonment and domestic violence. Specific data regarding Illegal abortion is very hard to find for certain reasons. However, with the help of research papers, surveys, and large number of news media that provide information regarding abandoned babies found frequently, uncovered illegal abortion clinics, teenagers or housewives who are reported to have had abortions due to economic hardship, and domestic violence are very helpful in this research

Analysis is an investigation of an event to find out the true situation; elaborating a subject on its various parts and studying the parts themselves and the relationships between the parts to obtain a proper understanding and understanding of the overall meaning.⁵ Social impact is the influence or result of an event, situation, policy resulting in positive or negative changes in the social environment, and social conditions.⁶ Social impact of law is an influence or consequence of an event, situation, or policy that is influenced by law. These changes may result in a positive or negative way depending on the social environment, social conditions, social changes, or social adaptations. Although social impact of law has a positive result in the beginning, the result may change over a period of time. Social impact can be caused by many things that have a relationship between one and another, such as social impacts due to economy, social impacts due to culture, social impact due to law. As an American activist named Martin Luther King Jr said in 1963, Law and order exist to establish justice. When they fail in this purpose, they become dangerously structured that could potentially block the flow of social progress.⁷ Analyzing the social impact of law is very important because the author can find out about the existing social impacts that occur in Indonesian society and can look for possible solutions so that this particular problem can be addressed according to the current needs for the importance of public justice. Analysis can serve as a more

⁵ KBBI. "Analisa." *Hasil Pencarian - KBBI Daring*, kbbi.kemdikbud.go.id/entri/analisa.

⁶ Communityscot. "What Is Social Impact?" Communities Channel Scotland, www.communityscot.org.uk/social-impact-pledge/what-social-impact/

⁷ Paisley, Laura. "Law with Social Impact." USC News, 19 May 2016, news.usc.edu/57808/law-with-social-impact/.

detailed understanding of the social impact of the law which can be used as a piece of information for the public and as a goal for someone to make or determine a decision. Although several indicators can cause a positive or negative impact on society, this thesis will focus on the negative social impacts that occur among Indonesian society due to strict abortion law that is written in Article 75 of the Health law. Hopefully, this thesis will be able to find the legal reality in Indonesian society. Starting with how unwanted pregnancy occur, social view toward pregnancy outside of marriage which has been explained. Continued with definition and understanding about abortion, Indonesian society's view toward abortion, why the illegal abortion rate continues to increase, and how illegal abortion affect the increasing number of Maternal Mortality Rate (MMR) in Indonesia, and child abandonment.

Back in the day where the Indonesian Criminal Law is not applied yet, practice of abortion in Indonesia was carried out with the intention to limit the number of families that only women who were not married can do the procedure. At that time, there are embryos found in some places, the art of massage to abort a baby is popular, and abortion was always practiced without medical professionals. In the medieval era after Christianity spread throughout Europe, Christians strongly reject sexual activity outside of marriage and praise virginity, wish for monogamous marriage, prohibit abortion, and limit the number of children using contraception. In 1881, the Dutch East Indies colonial government created a law on abortion and the colonial government issued this law because they saw that the

practice of abortion may endangered women's lives, which at that time, abortion still carried out using traditional massage method. When Europeans colonized Southeast Asia in the 19th century as in Indonesia, this regulation came into force in Indonesia in 1918 and was still applicable until Indonesia's independence because abortion was considered human murder. In the 20th century, the pro-abortion movement and feminism united to defend the act of abortion, which eventually allowed some countries to do abortion for medical reasons. Along with development of time, Indonesia issued a Health Law in 1992 where abortion is still prohibited but can be done if it meets medical indications and the victim of rape.⁸

Before Abortion Law existed in Indonesia, abortion was enforced freely by using herbal medicines, sharp objects, and other traditional methods.⁹ There were no regulations and/or indicators where abortion was allowed back then. This means that there is no standard for someone to be able to have an abortion and can endanger the life of the mother. After the Abortion Law was enacted in Indonesia, there are standards for hospitals and medical personnel to carry out safe abortion measures so that these actions can be carried out as safely as possible for the health of the mother. However, because abortion regulations have several indicators to be legal and not everyone can have an abortion. People who are unable to carry out an abortion legally because they do not meet the requirements, usually choose to have

⁸ Imam Bachtiar, et al. "Sering Jadi Kontroversi, Ini Sejarah Aborsi Di Dunia Dan Masuk Ke Indonesia." *Minews ID*, 20 Aug. 2020, www.minews.id/headline/sering-jadi-kontroversi-ini-sejarah-aborsi-di-dunia-dan-masuk-ke-indonesia.

⁹ Pradana, Shandy. "7 Fakta Sejarah Tentang Aborsi dan Kontrasepsi." *IDN Times*, IDN Times, 19 Dec. 2020, www.idntimes.com/science/discovery/shandy-pradana/sejarah-aborsi-c1c2/7.

an illegal abortion using drugs and certain procedures without knowing or considering the dangerous side effects.

Termination of a fetus or abortion according to the dictionary from Kementerian Kesehatan republic Indonesia, is the termination of the result of conception before the fetus can survive outside the womb, which is usually at 20 weeks of age. Abortion can be divided into 2 types, namely spontaneous abortion, and induced abortion.¹⁰

- 1) Spontaneous abortion is a pregnancy that ends spontaneously, prematurely, or naturally at the age of the embryo/fetus below 20 weeks (18 weeks after conception) or, if the pregnancy age is still unknown, and the weight of the embryo/fetus is less than 400 g.¹¹
- 2) Induced abortion is when a procedure is done or medication is taken to end a pregnancy.¹² Induced abortion can be safe if the procedure is performed by someone highly experienced and reached a particular standard to conduct the procedure. If the procedure is not based on the necessary standards, the procedure is called unsafe induced abortion which according to World Health Organization is a procedure done in the hope to terminate an unintended or unwanted pregnancy performed by someone who lacks the necessary skills that are needed, with minimal

¹⁰Kementerian Kesehatan. "KAMUS, Abortus = Aborsi." *Kementerian Kesehatan Republik Indonesia*, www.kemkes.go.id/folder/view/full-content/structure-kamus.html.

¹¹ Kesehatan, Kementerian. "KAMUS, Abortus Spontan = Keguguran." *Kementerian Kesehatan Republik Indonesia*, www.kemkes.go.id/folder/view/full-content/structure-kamus.html.

¹² "Induced Abortion." ACOG, May 2015, www.acog.org/womens-health/faqs/induced-abortion.

medical standards, unsuitable environment and may involve the insertion of an object such as root, twig, or traditional concoction into the uterus by a force which can lead to health risks long-term complications and even death.¹³

There are several reasons why any woman would want to have an abortion. It could be because of their own choice or because it is recommended by their medical team. Namely,

- 1) Rape Case
- 2) Suggested by the Medical Team or doctor who has thought carefully and carefully
 - i) If the baby is born with a disability so that it can reduce the quality of life for the baby in the future
 - ii) Can endanger the health of a mother during childbirth or pregnancy
 - iii) When the mother's health endangers pregnancy, for example, if the mother is suffering from heart disease, cancer, diabetes, or an age that can endanger the pregnancy, usually an abortion is recommended by a medical member to save the mother's health.¹⁴

¹³ WHO, World Health Organization. "From Concept to Measurement: Operationalizing WHO's Definition of Unsafe Abortion." Who.int, 2014, www.who.int/bulletin/volumes/92/3/14-136333.pdf.

¹⁴ The Jakarta Post. "Common Reasons for Recommended Abortions." The Jakarta Post, 16 Sept. 2016, www.thejakartapost.com/life/2016/09/06/common-reasons-for-recommended-abortions.html.

3) Someone's unpreparedness

- i) An age that is not mature (still a teenager)
- ii) Insufficient economy¹⁵
- iii) Pregnant outside of marriage
- iv) The contraceptive device is broken and doesn't want to have more children
- v) Not ready physically or mentally¹⁶

The word abortion itself is still considered taboo by most Indonesians where society has mixed opinions when it comes to abortion, because of that many people have an abortion without thinking about the health and safety protocol which has been established by the Abortion Law. As mentioned earlier, abortion is an activity that can endanger the health of the mother if it is not done properly and this is one of many indications why abortion is still considered a criminal act in Indonesia. The word abortion itself is a debate that creates a lot of tension from various points of view in Indonesian society. By law, abortion is a criminal act unless the abortion fulfills the indicators stipulated in Article 31 Of the Reproduction Health Law. Religiously, Indonesia is a country that embraces the Muslim religion, but the word abortion has several different opinions because the Al Quran does not allow abortion (Al Isra: 31). Some Islamic leaders considered abortion acceptable.

¹⁵Aufa, Jazaul. "4 Alasan Wanita Lakukan Aborsi." liputan6.Com, Liputan6, 25 Sept. 2019, www.liputan6.com/health/read/2146881/4-alasan-wanita-lakukan-aborsi.

¹⁶Wahyuningsih, Merry. "Ini Alasan Perempuan Lakukan Aborsi." DetikHealth, 30 May 2012, health.detik.com/ulasan-khas/d-1928122/ini-alasan-perempuan-lakukan-aborsi.

Among Muslim leaders, Followers of Imam Hanafi considered abortion acceptable for up to 120 days after conception, while followers of Syafi'i believed that abortion must only take place within 40 days of conception.¹⁷ In the Christian religion, no Christian leaders supported terminating pregnancies.

Socially in Indonesia, there are 3 different opinions when it comes to the legality of abortion namely those who disagree with the act of abortion, those who disagree with the act of abortion but still agree to give certain qualification to future mothers whose lives are threatened and the pregnancy is due to rape, and lastly are those who support abortion to be legalized as a whole as long as the baby is under 16 weeks old because they consider abortion to be the decision of the future mother. Some Indonesian thinks abortion is taboo, an act of murder, is not tolerable and Indonesia should never legalize abortion in any situation or condition. Some Indonesians have the same opinion as a philosopher named Plato (427-347 BC), arguing that the fetus has not been considered a whole human. Hence, abortion of the fetus cannot be considered a criminal act.¹⁸ With that, abortion is the choice and right of a mother if she wants to do the procedure, so abortion should be legalized before the baby is 16 weeks old. Some think that abortion is taboo, a disgrace, and an act of murder but the future mother should be able to have an abortion as an option under certain conditions as currently applied in Abortion Law. Which in this

¹⁷“Abortion In Indonesia.” Guttmacher Institute , Guttmacher, Sept. 2008, www.guttmacher.org/sites/default/files/report_pdf/ib_abortion_indonesia_0.pdf.

¹⁸ Aristotle, and Plato. “Greek and Roman Attitudes to Abortion.” *Internetbiblecollege*, internetbiblecollege.net/Lessons/Greek%20Roman%20&%20Jewish%20attitudes%20to%20abortion.pdf

case, the author believes is the right point of view for this country because it means that providing needed indicators could save a lot of mothers who need to have an abortion. One example is mother who has complications in her pregnancy and can endanger her life if the pregnancy continues.

Due to a large number of public opinions regarding abortion and Abortion Law in Indonesia, this has led so many people to carry out illegal abortion in secret and without acknowledging the side effects of carrying out illegal abortion to cover up family disgrace. Which resulted in uncertain data on illegal abortion in Indonesia. In general, abortion itself is a dangerous procedure and can jeopardize the health of the mother. However, the safest period to conduct an abortion according to abortion professionals is during the first trimester, or performed up to 13 weeks of pregnancy. A first-trimester abortion is one of the safest medical procedures and most induced abortions are performed during the first trimester, but it can only be done safely in a hospital that meets all procedures needed and is performed by a doctor and nurse who is trained to do this specific procedure.¹⁹

Most pregnancy out of marriage case choose to carry out illegal abortion by using herbal medicines or inserting sharp objects to forcibly remove the baby or destroy the fetus in the womb. This has led to an increase in the Maternal Mortality Rate statistic because most people who carry out illegal abortions are not aware of the risk of having an unsafe abortion. Although the time, data, and resources are

¹⁹ “Induced Abortion.” ACOG, May 2015, www.acog.org/womens-health/faqs/induced-abortion.

limited, this analysis can help find any solutions and recommendations to reduce the statistics on illegal abortion, Mental Mortality Rate (MMR), and domestic violence against women and children.

As a hypothesis, although abortion can be performed for certain reasons, abortion is still considered a criminal act so not everyone can perform an abortion at will. Article 75 of the Health Law regulates certain indicators where an abortion can be declared legal, which mentioned that the act of abortion can be performed based on indications of a medical emergency or pregnancy due to rape. However, because there are so many unwanted pregnancies that occur and it certainly do not meet the requirements in the Abortion Law to have a legal abortion, most people choose to have an illegal abortion which is likely to increase the MMR rate. Meanwhile, for someone who is forced to keep their baby because they do not want to do illegal abortion, there is a higher chance for them to abandon their baby and increasing number of domestic violence due to pressure or economic deficiency.

From the preliminary research that has been done so far, it appears that the statistics on abortion still increases every year. Although the number of illegal abortions cannot be calculated and ascertained but based on news and surveys, the number of illegal abortion increases every year. Due to the limited data, time, and sources for writing this thesis, the most recent statistical research available online about abortion is conducted In 2017, a national survey agency named Survey Demografi dan Kesehatan Indonesia (SDKI) which created by a non-ministerial

government institution that focuses on information on births, family planning, maternal and child health, maternal and child mortality released a data about abortion. The results from the 2017 survey involving 10.691 unmarried women aged 15-24, it is known that around 24.4% of the participants had unwanted pregnancies, and 49.6% of the participants had known someone that had aborted their baby.²⁰

The Maternal Mortality Rate caused by illegal abortion by Indonesian people is still rapidly increasing as officially mentioned by the chairman of the International Conference Indonesia Family Planning and Reproductive Health (ICIFPRH) in 2019 who gave a conference report in Yogyakarta and said that in 2018 and 2019 MMR in Indonesia reached 305 deaths per 1000 mothers. 30% of which were due to bleeding, hypertension, and infection, that could be caused by illegal abortion.²¹ Lastly, the increasing statistics of child abandonment and Domestic Violence against women and children is due to families or individuals are increasing. Violence cases against children age 0- 17 are also increasing in 2020. Seen from data released by an organization called *Sistem Informasi Online Perlindungan Perempuan dan Anak* (SIMFONI PPA) which was created by the Government of the Republic of Indonesia through the Ministry of Women's

²⁰ Badan Kependudukan dan Keluarga Berencana Nasional, BKKBN, dan Kementerian Kesehatan. "Pengalaman Aborsi Diantara Teman" Survei Demografi dan Kesehatan: Kesehatan Reproduksi Remaja, edited: by BPS Badan Pusat Statistik, ser. 2017, 2018, p. 140. 2017, e-koren.bkkbn.go.id/wp-content/uploads/2018/10/Laporan-SDKI-2017-Remaja.pdf

²¹ Mukti, Akbar Hari. "Konferensi Internasional Pertama KB-Kespro, Angka Kematian Ibu di Indonesia Masih Tinggi." *Tribun Jateng*, *Tribun Jateng*, 28 Sept. 2019, jateng.tribunnews.com/2019/09/28/konferensi-internasional-pertama-kb-kespro-angka-kematian-ibu-di-Indonesia-masih-tinggi

Empowerment and Child Protection of the Republic of Indonesia to develop a recording and reporting application system about violence against women and children. The data states that cases of child abuse aged 0-17 years in Indonesia have reached 6378 cases. The highest cases per 10,000 children were in East Java with 728 victims, Central Java with 619 victims, South Sulawesi with 548 victims, West Java with 489 victims, North Sumatra with 352 victims, and various islands scattered around Indonesia.²²

As mentioned before, several cases of child violence can be caused by someone who is not mentally, physically, and economically ready to have children but are forced to keep their baby because they do not meet the Abortion Law requirements that are applicable to have an abortion. The causes of violence against children are explained by a government website which explains that the factors causing violence in children can be caused by stress in the family. Stress in the family can come from children, parents (mother or father), or certain situations. Stress comes from children can be caused when a children with physical, mental, and behavioural conditions look different from other children in general. Stress that comes from husband or wife can be caused by mental disorders (psychological), stress that comes from certain situations, such as a husband/wife who has been laid off (termination of employment) or unemployment, or economic unpreparedness to

²² PPA, SIMFONI. "SIMFONI." *PPA*, 2020, kekerasan.kemenpppa.go.id/ringkasan.

meet family needs.²³ Although not all cases are caused by abortions or unprepared pregnancies, it certainly took a big responsibility in that matter.

This thesis may look very similar to Savina Wibowo's thesis because her thesis analyzes conflicting laws between Indonesian Criminal Code and Health Law whereas this thesis does not discuss legal analysis. This thesis analyzes the social impact on legal reality using Donald Black's theory where he mentioned that the effectiveness of a law is a major problem in the sociology of law which is obtained by comparing legal reality in theory and in practice. If there is a difference between the law and legal reality, then the law is considered to be ineffective.²⁴ This theory and data collected will be able to prove whether the abortion law in Indonesia has been or still effective for the Indonesian society.

Philosopher named Aristotle states that law was created to maintain and regulate people's behavior specifically to maintain order and avoid chaos in a country. This analysis is done because the Abortion Law that is applied in Indonesia certainly has a very good intention to try decrease illegal abortion rate. The law already has points that covers health issues with the mother, baby, and rape victims. However, the law still not able to fill the gaps that are needed by Indonesian society for example are unprepared pregnancy. Abortion law that currently applied in

²³ Pemberdayaan Perempuan dan Perlindungan Anak. "Faktor Penyebab Terjadinya Kekerasan Pada Anak." Situs Resmi Pemerintah Kabupaten Buleleng, 30 Apr. 2018, bulelengkab.go.id/pengumuman/faktor-penyebab-terjadinya-kekerasan-pada-anak-27

²⁴ Biroli, Alfian. Problematika Penegakan Hukum di Indonesia
[file:///Users/jettaloenardi/Downloads/3728-8943-1-SM%20\(1\).pdf](file:///Users/jettaloenardi/Downloads/3728-8943-1-SM%20(1).pdf)

Indonesia is where abortion can be done legally on certain qualifications under Article 75 of Law no 36 year 2009. Because of it, this thesis wants to find out about the social impact of the current abortion law in Indonesia and prove whether the existing laws in Indonesia have met the needs of society and the objectives of the law itself. The study of legal reality (*tatsachen wissenschaft*) is a study of the realities that occur in society. Where this study is theoretical empiric using inductive thinking methods.²⁵ The social impact analysis on legal reality is an analysis that focuses more on the positive and negative social impacts of existing laws and is written clearly in the hope of providing justice for the Indonesian society. Whereas Legal Analysis in a thesis paper for example in Savina Wibowo's thesis is usually an analysis that focuses on existing and applicable laws and regulations that have errors or legal void where it can lead to misunderstanding or no justice served by the existing law. Legal Analysis is an effort to find out the actual situation of existing legal conditions to provide an assessment to determine whether the purpose of its formation has been achieved, as well as to find out the benefits and impacts of implementing these legal norms. The legal analysis serves as a tool that can detect disharmonious, contradictory, or ineffective laws and regulations.²⁶

²⁵ Purnadi Purbatjaraka & Soerjono Soekanto, *Perihal Kaedah Hukum*, Bandung; Citra Aditya Bakti, 1989, hal.10-11

²⁶ BPHN, Badan Pembinaan Hukum Nasional. "Kebijakan Analisis dan Evaluasi Hukum." Badan Pembinaan Hukum Nasional, 2017, www.bphn.go.id/data/documents/dispub_partisipasi_publik_20160728_min_usihen.pdf

Therefore, this research is an important part of trying to reduce the social impact that occurs in Indonesia because this thesis will analyze the social impact that occurs in Indonesian society that is caused by illegal abortion, which occurs due to strict abortion law in Indonesia. This thesis is written with the intention of knowing the social impact that occurs in Indonesia because not many people know the social impacts that may occur due to illegal abortion. Apart from that, this thesis is conducted so that the law in Indonesia can fulfill the real objectives of the law and open up opportunities or solutions for people who are negatively affected by the current strict abortion law in Indonesia. Lastly, if the government can provide a solution for the affected people, this can avoid debates and protests as what happened in Poland. As mentioned above, there is no Christian leader that allows abortion activities to be carried out by anyone for any reason. What happened in the Poland was, the government supported this and decided to remove the regulation stating that abortions due to fetal congenital defects are unconstitutional so that it makes abortion more difficult and does not provide the right solution for people in need. This creates a dispute between the community and the government where people who do not agree to hold long-term protests in the middle of a pandemic that can also endanger others.²⁷

²⁷ Scislowska, Monika. "Poland's Leader Wants Churches Defended, Condemns Protests." *Associated Press News*, 28 Oct. 2020, apnews.com/article/poland-womens-rights-3ed8662eb28a3e9700863eba27e9b5fc.

1.2 Formulation of Issues

1.2.1 How does Indonesia's strict abortion law affect mothers who were unprepared for pregnancy and those with financial hardships?

1.3 Research Purpose

The purpose of this thesis is:

1.3.1 To find out the legal realism issue from strict abortion law in Indonesia which causes a social impact to occur and increase in Indonesian society. This is done so that the abortion law in Indonesia can be adjusted to the realities that occur and needed in the community

1.3.2 To be able to help other researchers or perhaps an organization that is currently analyzing a similar topic as this thesis. By providing information, understanding, and opinion from this thesis relating to the strict abortion law in Indonesia and the social impact that occurs in Indonesia.

1.4 Research Benefit

1.4.1 Theoretical Benefit

This thesis is expected to find answers to the formulation of issues question regarding "How does Indonesia's strict abortion law affect mothers who were unprepared for pregnancy and those with financial hardships."

Using the data that has been collected from private organizations and government organizations in the hope that the answers can be used for organizations related to abortion as well as for the government to look and

see whether the current abortion law in Indonesia is in accordance with what is needed by the community.

1.4.2 Practical Benefit

The analysis in this thesis is expected to be useful to foresee future cases related to the social impact due to strict abortion law. Other than that, to improve abortion laws in Indonesia if there are deficiencies in the current applicable abortion law. This is done by providing data and information obtained from certain private and government organizations related to abortion, women's health, and family planning so that it can strengthen the answers and analysis to the question used in this thesis.

1.5 Framework of Writing

To create beneficial qualitative research as expected by the author, the study and analysis must obtain results that have the intended purpose and benefits for the readers. Therefore, the author decided to divide this research into 5 chapters. Where chapter 1 is the introduction to the thesis to provide an overview for the reader about what will be discussed in the thesis. Followed by chapter 2 regarding literature / theoretical framework which discusses the thesis's topic using definitions, theories, and understanding related to the topic. Chapter 3 is about research methodology which discusses the references used by the author to collect data and information. Chapter 4 is about research and analysis which discusses and analyzes data and information that has been collected. Closed by chapter 5, conclusion, and

recommendation where the author will provide a conclusion and recommendation based on the data and information that has been obtained.

1) Chapter 1: Introduction

This chapter mainly explains the general information towards the main discussion of this thesis. Outlining the laws and regulations regarding abortion law that currently applicable in Indonesia, the social impact that occurs due to Article 75 of Law no 36 year 2009 regarding health, how this thesis will be different from other people's thesis the formulation of issues, the purpose, and benefits of writing this specific topic for this thesis.

2) Chapter 2: Literature Review/ Theoretical Framework

In chapter 2, the author will explain more in detail about the definition, theory, and understanding related to the topics in this thesis. In theoretical framework, the author uses different explanation by experts to try to understand definitions and theories such as social, society, and law explained by Soerjono Soekanto, Robert MacIver, and Donald Black. The sociology of law theory explained by Lawrence Meir Friedman, Social impact of law explained by Donald Black and lastly legal realism theory explained by Gustav Radbruch. In conceptual theory, the author dig deep into the definition of pregnancy, unprepared pregnancy, abortion which described by several experts who mentioned

that abortion can be divided into several types and can be extremely dangerous in some cases, and different types of social impact and social impact analysis

3) Chapter 3: Research Methodology

This chapter describes the procedures and references used by the author in obtaining data for research, using private and government organizations such as the *Sistem Informasi Online Perlindungan Perempuan dan Anak (SIMFONI PPA)*, *Kementerian Kesehatan (KemKes)*, *Badan Kependudukan dan Keluarga Berencana Nasional (BKKBN)*, *World Health Organization (WHO)* and some latest news are used as the latest data and information about what is happening in the community. In addition, this chapter also describes the types of research methodologies and methods used by the author to describe issues related to illegal abortion and other social impacts that occur as a result of the Abortion Law in Indonesia.

4) Chapter 4: Research and Analysis

This chapter will particularly discuss and also analyze the results from the research using surveys and data that has been conducted by related organizations, news around Indonesian islands regarding illegal abortion, violence against women and children and maternal mortality rate. Other than that, this chapter will also analyze the legal reality, what

are the social impacts and how the purpose of law is different with the actual reality experienced by the Indonesian society.

5) Chapter 5: Conclusion and Recommendation

This chapter is going to be divided into two sections which are the conclusion and recommendation. The conclusion that will be in this thesis is based on the data that the author got from conducting research using survey data results from organizations, conferences, and news related to this thesis. The recommendation in this thesis is to help figure out a way to be able to reduce or decrease the number of illegal abortions and violence that happens in Indonesia.

