

Analisis hukum berperspektif feminis terhadap pengaturan tentang aborsi dalam undang-undang nomor 36 tahun 2009 tentang kesehatan dan peraturan turunannya (analisis putusan No. 5/Pid.Sus.Anak/2018/PN Mbn) = Legal analysis from feminist perspective on the regulations of abortion stipulated under law no.36 of 2009 on health and its derivative regulations (analysis on decision no. 5/Pid.Sus.Anak/2018/PN Mbn)

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Abstrak

Skripsi ini menganalisis Putusan No. 5/Pid.Sus.Anak/2018/PN Mbn yang menjatuhkan hukuman 6 bulan penjara kepada korban perkosaan yang melakukan aborsi yang tidak sesuai dengan ketentuan hukum. Hakim yang mengadili perkara tidak cukup memperhitungkan bahwa, korban adalah seorang anak, mengalami kehamilan akibat perkosaan inses, dan tidak dapat mengakses aborsi yang legal karena keterbatasan pengetahuan dan sumber daya. Hakim hanya menggunakan batu uji berupa ketentuan prosedural mengenai aborsi dalam Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan dan peraturan turunannya. Pokok permasalahan dalam skripsi ini adalah posisi perempuan korban perkosaan dalam pengaturan aborsi di Indonesia dan implikasinya dari perspektif teori hukum feminis. Penulis menggunakan metode normatif empiris dan teori hukum feminis dengan konsekuensi metodologis melihat permasalahan ini dari perspektif perempuan. Korban perkosaan terbentur kebuntuan legalitas formal untuk dapat mengakses aborsi yang aman. Korban perkosaan memiliki kecenderungan mengalami trauma pasca perkosaan sehingga sulit berinteraksi dan melaporkan perkosaan yang terjadi, cenderung tidak mengetahui gejala dan usia kehamilan, sehingga terlambat melakukan visum et repertum dan laporan yang dibutuhkan. Selain itu, fenomena victim blaming meletakkan kehamilan akibat perkosaan sebagai takdir yang harus dijalani dan dipertanggungjawabkan oleh korban. Berdasarkan hasil penelitian, pengaturan tentang aborsi di Indonesia belum dapat mengakomodasi kebutuhan dan pengalaman korban perkosaan. Terdapat batas usia kehamilan dan persyaratan birokratis untuk dapat melakukan aborsi. Selain itu, belum terdapat rumah sakit yang dapat menyelenggarakan aborsi secara legal. Sehingga diperlukan perubahan pengaturan usia kehamilan, pemangkasan prosedur birokratis, dan penetapan rumah sakit tertentu sebagai penyelenggara fasilitas layanan kesehatan yang dapat melakukan aborsi secara sehat, aman, dan legal.

This thesis analyzes Decision No. 5/Pid.Sus.Anak/2018/PN Mbn which gave 6 months imprisonment for a victim of rape who had an abortion that was not in accordance with prevailing laws. The Panel of Judges have failed to consider the facts that she is a child who had a pregnancy due to incest rapes and she could not access legal and safe abortion since she had limited knowledge and resources. The Panel of Judges limitedly used the formality and procedural provisions regarding abortion as regulated in Law Number 36 of 2009 on Health and its derivative regulations. The main problem in this thesis is the position of women rape victim in the regulation of abortion in Indonesia and its

implications from feminist legal theory perspective. The author uses empirical normative method and feminist legal theory by looking at this problem from women's perspective as the methodological consequence. Rape victim is hampered by a formal legality impasse to be able to access safe abortion. In fact, rape victim has a tendency to experience trauma after the rape. Rape victim is often found to be difficult to interact with. It is hard for a rape victim to report the rape that has been occurred, the rape victim tend to not aware of the symptoms and age of pregnancy, therefore it is often too late to conduct visum et repertum and reports as required. In addition, the phenomenon of victim blaming puts pregnancy due to rape as a destiny that must be accounted by the victim. Those whole things lead the victim to experience re-victimization and obstacles in proving the crime of rape that has befallen her. Research results find that, regulations of abortion in Indonesia have not been able to accommodate the needs and experience of rape victim. There are limitation based on age of pregnancy and bureaucratic requirements to be able to conduct an abortion. In addition, there has been no hospital yet that can carry out legal abortion. It is necessary to amend the age of pregnancy limitation, trim the bureaucratic procedures, and establish certain hospitals as health services providers that can conduct healthy, safe, and legal abortion.