



DISPARITIES OF PUNISHMENT AGAINST PEOPLE OF THE CRIME OF ABORTION (Analysis Decision Number 01/ Pid.B /2013/ PN.Plp and Decision Number 242/ Pid.Sus /2015/ PN.Kpg)

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Abstract

Various form problems that occur in handling case follow criminal abortion that is exists disparity criminal in matter his punishment . Problem the the source is judge's decision . Power judiciary as something free and independent state power in one side bring huge impact positive to effort enforcement law in Indonesia. Writing This use study law descriptive , which is in study This writer use type study juridical normative use method Research data collection References . Study This For know How accountability criminal to perpetrator follow criminal abortion , implementation law to perpetrator follow criminal abortion , in analysis decision number : 01/ Pid.B /2013/ PN.Plp and decision number : 242/ Pid.Sus /2015/ PN.Kpg . Based on results research and discussion then get it picture , that accountability criminal perpetrator do follow criminal abortion arranged in Articles 299, 346-349 of the Criminal Code and regulated in Articles 75-77 and Article 194 of the Law Number 36 of 2009 Concerning Health . Application law to the perpetrator did it follow criminal abortion analysis decision Number 01/ Pid.B /2013/ PN.Plp and Number 242/ Pid.Sus /2015/ PN.Kpg , that before drop criminal to the defendant , the judge has base considered considerations from charges and facts at trial . Analysis decision Palopo District Court Already in accordance with the elements charged prosecutor prosecutor general which the judge decides with based charges and facts at trial , vs backwards with the Kupang District Court The Panel of Judges did not consider indictment prosecutor prosecutor second general that is elements chapter more dominant proven inside facts the judge Because perpetrator abortion No is from power medical or power health so that give rise to oddity rule law in the position process applied law to perpetrator follow criminal different abortions to two decision perpetrator follow criminal abortion .

Keywords : *Disparity Punishment , Offender , Action Criminal Abortion*

A. INTRODUCTION

Problematic in handling case perpetrator do follow criminal abortion is emergence disparity criminal in matter his punishment . Problem the the source is judge's decision . Power judiciary as something free and independent state power in one side bring huge impact positive to effort enforcement law in Indonesia. In matter this , the judge becomes an independent body and its decisions No can influenced by bodies or power other . But on the side other , freedom of the judge in drop the verdict apparently also brought something impact negative that is appearance disparity criminal That Alone. Disparity Criminal (*Disparity of Sentencing*) in matter This is application criminal offense that is not The same to follow the same crime (*Same Offence*) or to actions criminal nature it's dangerous can compared (*Offences of Comparable Seriousness*). Disparity criminal bring quite an impact Serious for perpetrator Alone nor for public wide. The convict will feel become victims of injustice . Court will considered by the convict No value the law , though award to law is one of objective punishment . Disparity is application criminal offense that is not The same to follow the same crime or to actions criminal nature it's dangerous can compared without base clear justification. According to Harkristuti Harkrisnowo , stated that disparity criminal can happen in a number of a number of category that is :

- a. Disparity between follow the same crime
- b. Disparity between follow criminal possession level the same seriousness
- c. Disparity punishment imposed by one panel of judges
- d. Disparity between sentences imposed by different panels of judges For follow the same crime

Based on opinion on can understood that one justification disparity criminal has bring law We to circumstances that are not Again in accordance with objective enforcement law .

Disparity criminal Good in a way direct nor No bring it straight away impact for public . Disparity criminal in perpetrator follow criminal do abortion must be prevented as early as Possible . At a glance seen that disparity criminal is form from injustice done by the judge to the seekers justice . Disparity criminal There is generally in the background back on consideration justice in every case . No all follow criminal intensity loss or the damage it causes The same . Therefore that's the judge too drop the verdict follow principle justice , how much tall damage or the losses it causes so like That anyway amount the sentence he imposed .

Disparity criminal bring problematic separately in enforcement law in Indonesia, one side disparity criminal is form from judge's decision in drop verdict , but on the other hand disparities criminal this also brings no justice for convict even society in general , so give rise to jealousy social and also outlook society towards institutions judiciary , which is later realized in form no concerned with enforcement law in public. Trust public more and more decreases in the judiciary , so happen condition Where Justice No Again trusted or considered as House justice for they or in other words, it happened failure from system Justice criminal . Circumstances This Of course give rise to contradiction decision justice and also conflict with the concept of the rule of law adopted by our country , where government is held based on legal and supported with exists institution judiciary ie institution Justice For straighten up law .

No until there course , concept equality in the eyes law (*equality before the law*) is one of them The characteristics of a rule of law state are still there need questioned related with existing reality , where disparity criminal looks so real in enforcement law . Fact the is form from treatment the judiciary does not The same to fellow perpetrator follow criminal the later kind given different punishments. Everyone who does follow criminal abortion called with Perpetrator follow criminal . Understanding perpetrator is the person who does it Alone fulfilling actions formulation offense and is seen as the most responsible on crime . very deed tightly to realization follow criminal the . There is connection deliberate with follow intended crime realized as well as know between perpetrator with other perpetrators and even with what the perpetrator did the is condition inclusion from corner subjective .

Code of Laws Law Criminal Code (KUHP) exists two form inclusion , the so-called as maker (*dader*) and helper (*mededader*). As for position from maker (*dader*) and helper (*mededader*) are regulated in the Criminal Code, namely : in Article 55 of the Criminal Code states four group the maker (*dader*) who can convicted that is perpetrator (*pleger*), ordered do (*doenpleger*), participate as well as (*medepleger*), and advocate (*uitlokker*). Whereas in the Article 56 of the Criminal Code explains what is punishable as servant something crimes (*mededader*), namely : those who intentionally give help on time crime done and those who give chance means or information For do crime .

Based on law positive in Indonesia, setting action abortion there is in two Constitution namely the Code of Laws Law Criminal Code (KUHP) Articles 299, 346, 347, 348 and 349 and arranged in Constitution Number 36 of 2009 concerning Health Articles 75, 76.77 and Article 194. Available difference between the Code of Laws Law Criminal Code (KUHP) with Constitution Number 36 of 2009 concerning Health in arrange problem abortion. Abortion or abortion content is termination (*termination*) of pregnancy intentional . Code of Laws Law Criminal Code (KUHP) with firm forbid abortion with reason whatever , meanwhile Constitution Number 36 of 2009 concerning Health allow abortion on indication medical nor Because exists rape . However provision abortion in Constitution Number 36 of 2009 concerning Health still There is limitations that are not can violated for example condition

pregnancy maximum 6 months after day First period final . Besides That based on Constitution Health Number 36 of 2009, action medical (abortion), as effort For save Mother pregnant and or the fetus can carried out by force existing health expertise and authority For that and done in accordance with not quite enough answer profession as well as consideration team expert . That matter show that abortion performed legal or can justified and protected in a way laws and everything actions carried out by force health to right reproduction Woman No is something follow criminal or crime .

Different with abortion performed without exists consideration medical , abortion the said to be illegal as well No can justified in a way law . Action abortion This said as follow criminal or follow crime because of the Code Law Criminal Code (KUHP) qualifies deed abortion the as crime towards life . Based on process , action abortion something has been done themselves , there are also those who use it help of others. Abortion performed Alone for example with method drink dangerous drugs fetus , or with do actions with on purpose want to abort fetus . Whereas when with help of others, abortion can done with help doctor , midwife or midwife . If follow criminal abortion This helped by someone else, then incident criminal the there is more from one person is the perpetrator , so must searching for responsibilities and roles each participant in incident the .

Like in verdict , case follow criminal perpetrator do abortion , in Judgment Number : 01/ Pid.B /2013/ PN.Plp , Prosecutor Prosecutor General accuse with Article 346 of the Criminal Code, is different with Decision Number : 242/ Pid.Sus /2015/ PN.Kpg , Prosecutor Prosecutor General accuse with Article 194 in conjunction with Article 75 paragraph (2) of the Law Number 36 of 2009 concerning Health . Here clear looks different indictment prosecutor Prosecutor General given to defendant . temporary that's what the judge decides grounded the charges against him prosecutor Prosecutor General as matter This in accordance with Article 182 paragraph (4) KUHP. Based on the indictment and the facts revealed at the trial the judge decided in accordance charges brought by the Prosecutor Prosecutor General Palopo District Court Because elements chapter perpetrator do abortion has fulfilled , however No notice principle applicable law that is the principle of Lex Specialis Derogate Lex Generalis that is Constitution Special put aside General Laws in accordance with provision Article 63 paragraph (2) of the Code Law The criminal code (KUHP) is : If something deed enter in something rule General criminal penalties are also regulated in rule special punishment , then special rules that's what is implemented .

Compare backwards with the Kupang District Court , Prosecutor Prosecutor General accuse with use Article 194 in conjunction with Article 75 paragraph (2) of the Law Number 36 of 2009 concerning Health that elements articles charged by the Prosecutor Prosecutor General has fulfilled with notice principles applicable law in Indonesia, and then the Judge looks at it the indictment and the facts revealed at trial that's it Correct defendant has proven do abortion . So as in two different verdict This should be implemented the same punishment , temporary That prosecutor Prosecutor General at the Palopo District Court sentenced to 1 (one) year prison and the judge decided 6 (six) months prison and likewise at the Kupang District Court prosecutor Prosecutor General accuse with 5 (five) years prison and the Judge decides with 3 (three) years and a fine Rp . 5,000,000 (five million rupiah). Based on the case above there is disparities within the verdict , where? looks clear that second decision the different . Based on background back on top , then selected this Thesis with title , “ **Disparities Punishment To Perpetrator Act Criminal Abortion (Analysis Decision Number 01/ Pid.B /2013/ PN.Plp and Decision Number 242/ Pid.Sus /2015/ PN.Kpg)**

B. FORMULATION OF THE PROBLEM

Based on background behind above , then formulation problem in discussion of this thesis is as following :

1. How Accountability criminal to perpetrator follow criminal abortion ?

2. How application law criminal in analysis Decision Number 01/ Pid.B /2013/ PN.Plp and Decision Number 242/ Pid.Sus /2015/ PN.Kpg ?

C. RESEARCH METHODS

Type research used in study This is method study law normative or study law literature (study approach). that is study the law is carried out with method study material References namely primary and secondary data . Material law the arranged in a way systematic to make it easier in take conclusion from the problems studied . In approach problem This use method approach Juridical Normative .

Approach This is approach to regulation current regulation . Approach legislation done with examine all over regulation related legislation with fill the law being dealt with . Approach problem juridical normative is approach used For approach regulation legislation (statue approach), approach This study regulation related legislation with regulation legislation moderate problem studied . Besides that , approach conceptual is also used For see concepts related laws with existing problems .

D. DISCUSSION

1. CRIMINAL LIABILITY FOR PERFORMERS OF ABORTIONS

a. Accountability Criminal

Accountability criminal in term foreign called with *toekenbaardheid* or *criminal responsibility* in Language leading English to punishment perpetrator with Meaning For determine is somebody defendant or suspect accountable on something follow crime that occurred or No . For can he was convicted si perpetrator , required the deed he did That fulfil element offense that has been determined in Constitution . Viewed from corner happen prohibited action , someone will be held responsible on his actions if action the oppose law from his actions . Viewed from corner ability responsible so only someone who is capable responsibility that can be held accountable on his actions .

Even though so , for can he was convicted someone is not Enough when that person has do rebellious action law only , but also must can proven that person do nature of action oppose law the with error . Error is element important in law criminal , elements from error in meaning broad (responsibility criminal) which includes exists ability responsible , yes connection inner between perpetrator with his actions , and his absence reason deletion error . Likewise errors in form errors include intentionality and negligence along with the types . This matter similar with opinion Moeljatno said that “ deep do deed must have error , cause principle in accountability in law criminal is “ no convicted If No There is error (*Geen straf zonder schuld ; Actus non facit reum nisi mens sist rea*)” Principle This No only in law written just but in the law does not written also applies in Indonesia.

Accountability criminal interpreted as he continued objective blame that exists in the action criminal and criminal existing subjective fulfil condition For can convicted Because his actions That . It 's basic deed is principle legality , meanwhile base can he was convicted maker is principle error . This means that maker deed criminal only will convicted If He have error in do deed criminal the . Therefore That 's responsibility criminal is people's responsibility towards follow the crime he committed . Strictly speaking , that person is responsible is follow the crime he committed .

According to Simons as base accountability criminal is faults in the soul perpetrator in relationship (error it) with possible behavior convicted and based mental That perpetrator who can convicted and based mental That pelkau can denounced Because his behavior . For exists the perpetrator 's fault must achieved and determined moreover formerly a number of related matters perpetrators , namely :

- a. Ability responsible .
- b. Relationships , psychology between the perpetrator and the resulting consequences (including behavior that is not contradictory in law in life daily) .
- c. *Dolus* and *culpa* , error is element subjective from follow criminal . This matter as consequence from his opinion that connects (unites) *the strafbaarfeit* with error .

b. Theory Sentencing

There is a number of theory objective punishment that is among others as following :

1) Absolute Theory or theory retribution (vergeldings theory)

Theory absolute or theory revenge look that punishment committed to perpetrator follow criminal is something revenge because of the person concerned has do follow criminal . Consequence from follow the crime committed , the victim feels disadvantaged Good in a way material nor immaterial . Besides matter that , no The crime committed is also detrimental interest the law has protected . Action available retribution in theory This has 2 (two) objectives , including : intended to perpetrator follow criminal (corner subjective) and addressed For replace loss immaterial among public in a way area (angle objective) .

Based on explanation above , yes is known that in theory absolute This more prioritize satisfaction heart , both the victim and the victim his family nor society in general .

2) Theory relatively or theory goal (doel theory)

Theory relatively or theory objective look that punishment committed to perpetrator follow criminal have objective For put things in order applicable law in life social . With exists criminal This expected can give effect deterrent to perpetrator and fear for public If want to do crime . Criminal has 3 (three) types characteristic For reach order applicable law in life public namely : scare , repair and destroy .

3) Theory combined (vernegings theory)

Theory combined look that punishment committed to perpetrator follow criminal is something revenge because of the person concerned has do follow criminal at a time as tool For put things in order applicable law in life social . Theory This is combined from theory absolute or revenge and theory relatively or objective

c. Perpetrator (Pleger)

Perpetrator is the person who does it Alone fulfilling actions formulation offense and is seen as the most responsible on crime . Perpetrator is the person who does it follow the crime in question , in meaning the person with something deliberate or something accident as required by law has give rise to something the consequences are not required by law , OK That is elements subjective nor elements objective , without looking is decision For do follow criminal the arise from himself Alone or No Because move by party third that is :

- 1) Responsible person (Indonesian judiciary) .
- 2) People who have power / ability For end forbidden circumstances , however let prohibited circumstances ongoing (Judicial Dutch) .
- 3) Obligated person end circumstances forbidden (Pompe); Understanding maker according to expert :
 - a) Everyone who does / causes it fulfilling consequences formulation offense (MvT), Pompe , Hazewinkel , Suringa , Van Hattum , Mulyatno) .
 - b) People who do in accordance with formulation offense (maker materill), those who are in Article 55 of the Criminal Code only equalized just with makers (HR, Simons, Van Hamel, Jonkers) .

Position perpetrator (*pleger*) in Article 55 of the Code Law Criminal law (KUHP), odd Because perpetrator responsible on his actions (perpetrator single) can understood :

- 1) Article 55 of the Criminal Code states anyone mentioned as maker , so *pleger* enter inside it .
- 2) They are responsible is domiciled as maker (Pompe) .

d. Abortion

1) Abortion According to the Code Law Criminal

The term “ abortion ” originated from the word *abortion* , language Latin , meaning “ birth before time ”. Synonym with that 's us know the term “ premature birth ” or *miskraam* (Dutch), miscarriage . It happened abortion Can in a way natural and not on purpose , it could also be because deliberate , with use medicines and methods method medical certain traditional as well as modern. *Abortus provocateur* , the term is intentional or in Language Indonesia abortion . While those who don't intentional , in other words miscarriage .

Abortion according to the Code Law The criminal code (KUHP) is :

- a) Expenditure results conception at every stage of development before the completion of pregnancy achieved (38-40 weeks) .
- b) Expenditure results conception before fetus can life outside content (weight not enough from 500 grams or not enough from 20 weeks). In terms of medicolegal so the terms abortion, miscarriage and birth premature have the same meaning and show expenditure fetus before age sufficient pregnancy .

2) Abortion according to Constitution Health

Understanding Abortion according to Constitution Health mentioned in article 75 paragraph 2 letter (e) of the Law Health Number 36 Years 2009 is mentioned indication emergency detected medical since age early pregnancy , whether threatened life mother and/ or suffering fetus disease genetic heavy and/ or disabled congenital , or not can repaired so that difficult baby the life outside kandugan . Meaning from sentence the is Abortion , according to Abdul Mun'im Idries , abortion according to understanding in a way medical is fall content or miscarriage and miscarriage That Alone means the end pregnancy , before festus can life Alone outside content .

Understanding Abortion according to Knowledge Medical is pregnancy stop before age 20 weeks of pregnancy resulting death fetus . If fetus born Happy before 38 weeks However after 20 weeks , then the term is birth premature . Abort content or in the world of medicine known with term abortion , meaning expenditure results conception (meeting cell eggs and cells sperm) before fetus can life outside content . This is a termination process life from fetus before given chance For growing .

Practice in the world of medicine There is various type abortion , among others abortion spontaneous or natural , ongoing without action whatever . Most caused Because not enough good quality cell eggs and cells sperm . Abortion artificial or on purpose is termination pregnancy before age 28 weeks pregnant as something consequence a deliberate and conscious action by the candidate Mother nor si implementation abortion (in matter This doctor , midwife or midwife) .

Abortion *Therapeutic* or Medical is abortion content work done on indication medical . As example , candidate medium mother pregnant but have disease blood tall chronic or disease severe heart disease that can endanger Good candidate Mother nor the fetus she is carrying . But This all on consideration medically mature and not haste . Abortion can it is said to be legal if known to the authorities like family , doctors , experts in field and the police.

e. Arrangement Law Criminal To Perpetrator Act Criminal Abortion

Act criminal to perpetrator do abortion can studied through two Constitution ie as following :

1) **Constitution Number 36 of 2009 Concerning Health** arrange special about existing abortions in Articles 75,76 and 77. Then provision the crime there is in Article 194 of the Law Number 36 of 2009 concerning Health . As for fill Article 75 as following :

- a) Everyone is prohibited do abortion .
- b) Prohibition as referred to in paragraph (1) can excluded based on :
 - 1) Indication emergency detected medical since age early pregnancy , whether threatened life mother and/ or fetus , which suffers disease genetic heavy and/ or disabled default . Or not can repaired so that difficult baby the live outside content ; or
 - 2) Pregnancy consequence rape is possible causes psychological trauma for rape victims .
 - 3) Action as referred to in paragraph (2) only can done after through counseling and/ or advisory pre action and ending with counseling post actions carried out by competent and authorized counselors .
 - 4) Provision more carry on about indication emergency medical and rape , as intended paragraph (2) and paragraph (3) are regulated with Regulation Government .

Article 76:

Abortion as intended in Article 75 only can done :

- a. Before pregnancy 6 (six) weeks old calculated from day First period last , except in matter emergency medical .
- b. By power health that has skills and authority certificate determined by the Minister.
- c. With agreement Mother pregnant in question .
- d. With permission husband , except rape victims , and
- e. Provider service adequate health conditions set by the Minister.

Article 77:

Government must protect and prevent Woman from abortion as intended in Article 75 paragraph (2) and paragraph (3) are not quality , no safe , and not responsible answer as well as contradictory with religious norms and provisions regulation legislation . Related about provision the crime arranged in Article 194: Everyone who with on purpose do abortion No in accordance with provision as intended in Article 75 paragraph (2) is punishable with criminal imprisonment for a maximum of 10 (ten) years and a maximum fine IDR 1,000,000,000.00 (one billion rupiah).

Based on explanation contained articles in Constitution health like Article 75 paragraph (3) referred to with the “ counselor ” inside provision This is everyone who has own certificate as counselor through education and training . Which can become counselor is doctors , midwives and staff health / energy medical. Explanation Article 76 is included about Terms and Conditions from implementation abortion namely :

- a) Before pregnancy 6 weeks old calculated from day First period last , except in emergency medical .
- b) By power health that has possessing skills and authority certificate issued by the minister .
- c) With agreement Mother pregnant in question .
- d) With permission husband , except rape victims .
- e) Provider service adequate health conditions set by the minister .

Then on to the explanation Article 77 in question with practice abortion is not quality , no safe , and not responsible answer is abortion performed with coercion and without agreement the woman concerned , which was carried out by personnel health is not professional , without follow standard applicable professions and services , discriminatory , or more prioritize rewards material rather than indications medical. Related with Articles 75,76,77 and Article 194 of the Law Number 36 of 2009 concerning Health more load about the act carried out doctor , midwife , technician health / energy medical or perpetrator main . Based on explanation above , which can be done convicted based on Constitution health only doctor , midwife , nurse health / energy medical and perpetrator main .

f. Code of Laws Law Criminal Code (KUHP)

Arrange problem *abortion criminalist* . Provision about *abortion criminalist* arranged in Articles 299,346,347,348, and Article 349 of the Criminal Code. As for fill Article 299 as following :

- 1) Goods Who with on purpose treat a woman or ordered treated , with tell or give rise to hope that with treatment That its content can dropped , threatened criminal prison four at most year or criminal maximum fine four twenty five thousand rupiah.
- 2) If it's the guilty one do thereby For look for profit , or make deed the as work or habit , or when he a doctor , midwife or interpreter drugs , criminal can added one third .
- 3) If it's the guilty one do crime the in operate his job , then his rights For do work That can revoked .

Article 346:

The woman with on purpose cause fall off or dead the content or tell others to that is , punished prison forever four year .

Article 347:

- a. Whoever with on purpose abort or turn off content a woman without his consent , threatened with criminal a maximum of two years in prison mercy year .
- b. If deed That result his death woman said , threatened with criminal imprisonment for a maximum of fifteen year .

Article 348:

1. Whoever with on purpose abort or turn off content a woman with his consent , threatened with criminal imprisonment for a maximum of five years six month .
2. If deed That result his death woman said , threatened with criminal a maximum of seven years in prison year .¹

2. Application Law Criminal To Perpetrator Act Criminal Abortion (Analysis Decision Number 01/ Pid.B /2013/ PN.Plp and Number 242/ Pid.Sus /2015/ PN.Kpg).

a. Case Analysis Decision Number 01/ Pid.B /2013/PN. Plp

Indictment Letter prosecutor Prosecutor General to Defendant WIWIK IRAWATI BINTI DALIMAN: That defendant WIWIK IRAWATI BINTI DALIMAN , on Wednesday 24 October 2012 at approximately 19.00 WITA , or at least at other times in In 2012 , located inside House the defendant in Ling Madura Kel . Lamasi Lamasi District Luwu Regency or at least in other places inside area Law Palopo District Court , one woman that is the defendant WIWIK IRAWATI BINTI DALIMAN intentionally abort or turn off its content or tell others to that's what the defendant did with method as following : That at the time and place like the started the defendant WIWIK IRAWATI BINTI DALIMAN has special relationship / dating

¹Annette Anastasia Napitupulu, *Journal Update Law Criminal To Act Criminal Abortion in Indonesia* , 2013, Medan, p.39.

with SUKRI where they together has do connection husband wife without legal ties so that Defendant WIWIK IRAWATI BINTI DALIMAN is 5 (five) months pregnant Then the defendant WIWIK IRAWATI BINTI DALIMAN has intention For abort its content Because the defendant WIWIK IRAWATI BINTI DALIMAN felt Afraid found out towards his parents if the defendant WIWIK IRAWATI BINTI DALIMAN is pregnant Then Defendant WIWIK IRAWATI BINTI DALIMAN leaves buy wine parent stamp collegium and extra joss, next defendant WIWIK IRAWATI BINTI DALIMAN on the day Monday October 22 2012 around 22.00 WIT drinks hard brand wine parent stamp college 1 (one) bottle mixed small with 1 (one) pack of drink sachets where's the extra joss freshener ? the defendant WIWIK IRAWATI BINTI DALIMAN put it in the A glass and drink it little by little until drink the finished .

That after 2 (two) days defendant WIWIK IRAWATI BINTI DALIMAN already drink drink hard brand wine mixed parent stamp college with extra joss, the defendant WIWIK IRAWATI BINTI DALIMAN felt his stomach pain and feeling existing fetus it contains want to go out so that the defendant WIWIK IRAWATI BINTI DALIMAN entered into the his room Then use sarong furthermore fetus which it contains go out Where fetus the No moving / not animate Again Then defendant WIWIK IRAWATI BINTI DALIMAN ago wrap fetus the with use veil the white Then the defendant WIWIK IRAWATI BINTI DALIMAN brought fetus that's what it is wrapped veil white garden behind House owned by WIWIK IRAWATI BINTI DALIMAN, then Defendant WIWIK IRAWATI BINTI DALIMAN dug land with using a machete then bury existing fetus wrapped veil white the furthermore Defendant WIWIK IRAWATI BINTI DALIMAN went home home .

In matter This prosecutor prosecutor general accuse defendant with Article 346 of the Code Law Criminal Code (KUHP).

Demands prosecutor Prosecutor General to defendant WIWIK IRAWATI BINTI DALIMAN:

- 1) State defendant WIWIK IRAWATI BINTI DALIMAN, proven guilty do follow criminal “ Abort content “ based on Article 346 of the Criminal Code in letter indictment second ;
- 2) Drop criminal to defendant WIWIK IRAWATI BINTI DALIMAN, because That with criminal prison for 1 (one) year prison , reduced during defendant detained and accused still is at in the prisoner .
- 3) Stating item evidence in the form of :
 - a) 1 (one) machete 44.5 cm long , confiscated for destroyed .
 - b) 1 (one) sheet sarong colored green striped color blue return to defendant .
- 4) Determine that the defendant burdened pay cost case amounting to IDR 1. 000,- (One thousand rupiah).

Decision Panel of Judges at Palopo District Court to defendant WIWIK IRAWATI BINTI DALIMAN:

- 1) State Defendant WIWIK IRAWATI BINTI DALIMAN, Has proven in a way valid and convincing guilty do follow criminal “ Abort content .
- 2) Drop criminal to Defendant because That with criminal prison for : 6 (Six) Months .
- 3) Determine the detention period carried out by the defendant deducted completely from the sentence imposed .
- 4) Set defendant still is at in prisoner .
- 5) Stating item evidence in the form of :
 - a) 1 (One) long machete size 44.5 cm; Confiscated for destroyed
 - b) 1 (one) sheet sarong colored green striped color blue ; Returned to Defendant WIWIK IRAWATI BINTI DALIMAN.
- 6) Charge defendant pay cost case as big as Rp . 1,000,- (one thousand rupiah).

b. Case Analysis Number Decision 242/ Pid /Sus/2015/ PN.Kpg

Indictment Letter prosecutor Prosecutor General to Defendant SELFINA JANED RIVANI HELDI PUTRI FANGGIDAE AKA FINA:

That He Defendant Selfina Janed Rivani Heldi Putri Fangidae alias Fina on the day Thursday April 2 2015 at around 12.30 WIT or at least on one occasion time in April 2015 or at least in 2015 took place At home witness Morina Femi Animerta Babys which is located on Jalan Perca Rt.07 Rw.02 Kel . Airnona District Kotaraja Kupang City or at least on one occasion a place that still is including in area law Kupang District Court , which with on purpose do abortion No in accordance with provision as such intended in article 75 paragraph (2), actions That done Defendant with method as following :

That started Defendant dating with witness Marsy Adillansa Malesay Then Defendant together with witness Marsy Adillansa Malesay do connection husband wife until finally on November 28 2014 the Defendant No get period return then in the month March 2015 Defendant do test pregnancy and declared positive pregnant Then tomorrow the day Defendant meet witness Maria F. Seran Doko (Defendant in file separately) and said “beta already pregnant ” then witness Maria F. Seran Doc said “ na Karmana Already Still school ni ” then Defendant answered “ that done Beta Sonde's older brother know ni ” then witness Maria F. Seran Doc said “ na Already drink just This drug but must pay IDR 250,000” later in the afternoon witness Maria F. Seran Doc call Defendant and said “ Miss you I have Rp. 50,000,- ko, I want it for vow Because This goods Want to vow” then tomorrow the day Defendant come House witness Maria F. Seran Doko and give Money Rp . 200,000,- (two hundred thousand rupiah) later witness Maria F. Seran Doc give 3 (three) bottles drug to Defendant However drug the No There is the reaction furthermore witness Maria F. Seran Doc deliver Defendant come House witness Morina Femi Animerta Babies For meet witness Martha A. Porumau (Defendant in file separately) however witness Martha A.

Porumau No There is At home so that Defendant together with witness Maria F. Seran Doc leave House witness Morina Femi Animertha Babies next day Wednesday March 25 2015 Defendant come return House witness Morina Femi Animertha Babies For meet with witness Martha A. Porumau Then upon arrival there Defendant convey Meaning arrival Defendant to witness Martha A. Porumau For abort content Then witness Martha A. Porumau asked “ womb Already How many last month Defendant answered ” Yes three months” later witness Martha A. Porumau said come back later We pray first and you must put Money first in the envelope and you emotional put Money three sheet in the envelope with the same nominal ” heard matter the Defendant direct put Money as big as Rp . 5000,- for 3 sheets in the envelope furthermore Defendant together with witness Martha A. Porumau pray Then finished pray witness Martha A. Porumau ordered Defendant For enter room middle Then upon arrival in the room , Defendant Sleep on carpet Then witness Martha A. Porumau smear oil in the stomach Defendant while said “ I want to search know child You Now is at where ” then finished smear oil the witness Martha A. Porumau holding / touching stomach Defendant Then after finished Defendant together with witness Martha A. Porumau go out from room middle going to space visitor Then upon arrival in room visitor witness Martha A.

Porumau said to The defendant “ you Already bring Money ko” later Defendant asked ” money how much ” then witness Martha A. Porumau said ” the first one Rp . 500,000,- finished That hatur pay Rp . 2,500,000,” heard answer the Defendant said “beta not yet There is money ” then witness Martha A. Porumau said “ na Tomorrow bring I 'll give you money medicine ” then Defendant said goodbye go home next day Thursday March 26 2015 around 08.00 WITA Defendant come return House Morina Femi Animerta Babies For meet witness Martha A. Porumau Then upon arrival there witness Martha A. Porumau currently cook drug from skins tree Then after drug the cooked and cold witness Martha A. Porumau give 2 (two) glasses drug the to Defendant unruk drunk Then after

Defendant drink drug the Then Defendant deliver Money to witness Martha A. Porumau as big as Rp . 200,000,- (two hundred thousand rupiah) then Defendant said goodbye go home to the house next day Saturday March 28 2015 Defendant sign up return House witness Morina Femi Animerta Babies Then upon arrival there witness Martha A. Porumau ordered Defendant space middle Then upon arrival in room middle , Defendant Sleep on carpet Then witness Martha A. Porumau enter stem wood into the genitals last victim witness witness Martha A. Porumau enter hand his right into the genitals Defendant Then pry genitals Defendant with stem wood the Then after finished Defendant said goodbye go home next day Tuesday March 31 2015 Defendant feel Sick stomach Then Defendant come return House witness Morina Femi Animerta Babies Then Defendant said “ stomach I sick ” then witness Martha A. Porumau give 2 (two) glasses drug to Defendant Then Defendant drink drug the next day Wednesday April 1 2015 around 18.00 WITA Defendant feel Sick stomach and from his cock go out blood next day Thursday April 2 2015 Defendant come return House witness Morina Femi Animerta Babies For meet witness Martha A. Porumau Then witness Martha A. Porumau rubbing onion red on stomach Defendant Then witness Martha A.

Porumau push stomach Defendant until existing fetus in the stomach Defendant go out Then witness Martha A. Porumau ordered Defendant muku / mengenden For emit the placenta is there in the stomach Defendant However witness Martha A. Porumau said ” you have a placenta break up ” then witness Martha A. Porumau wrap fetus the with cloth red Then witness Martha A. Porumau keep fetus the beside right Defendant Then witness Martha A. Porumau ordered witness Morina Femi Animerta Babies make coffee then Defendant drink the coffee next after finished witness Martha A. Porumau dig hole and bury fetus the Then Defendant said goodbye go home to the house next day Sunday March 5, 205 at around 22.00 WITA , Defendant experience Sick stomach Then Defendant muku However suddenly go out Ariary from in genitals Defendant until finally on the day Tuesday April 7 2015 around 13.30 WIT witness Ricky Marlon Fangidae (brother Defendant) said has take fetus that has buried At home witness Martha A. Porumau . Consequence deed Defendant cause fetus die . In matter This prosecutor Prosecutor General accuse defendant with Article 194 of the Law Number 36 of 2009 concerning Jo's health . Article 55 Paragraph 1.

Demands prosecutor Prosecutor General towards Defendant SELFINA JANED RIVANI HELDI PUTRI FANGGIDAE AKA FINA:

- a. State Defendant Selfina Janed Rivani Heldi Putri Fanggidae alias Fina is guilty do follow criminal " Abortion " as regulated and threatened criminal Article 194 of Law Number 36 of 2009 concerning Health Jo Article 55 Paragraph (1) 1st of the Criminal Code as follows in Indictment First .
- b. Drop criminal to Defendant Selfina Janed Rivani Heldi Putri Fanggidae aka Fina with criminal prison for 5 (five) years and a fine of IDR 5,000. 000,- (five million rupiah) air subsidy for 3 (three) months confinement deducted from the period of detention temporary with order for the Defendant still detained .
- c. Set goods proof :
 - 1) 1 (one) stick crowbar with long around 1 meter color black .
 - 2) 1 (one) sheet batik motif sarong
 - 3) 1 (one) piece of colored T - shirt gray Returned to Ricky Marlon Fangidae
 - 4) 1 (one) fruit crowbar with length 40 cm color black • 1 (one) piece carpet color red young .
- d. Punish Terakwa burdened pay cost case as big as Rp . 2,000,- (two thousand rupiah).

Decision Panel of Judges at Kupang District Court to Defendant SELFINA JANED RIVANI HELDI PUTRI FANGGIDAE AKA FINA:

- a. State Defendant Selfina Janed Rivani Heldi Putri Fangidae alias Fina is proven in a way valid and convincing guilty ordered do follow criminal abortion as regulated and

threatened criminal Article 194 of the Law Number 36 of 2009 Concerning Jo's health . Article 55 Paragraph (1) 1st of the Criminal Code as follows in Indictment Alternative First .

- b. Drop criminal to Defendant Selfina Janed Rivani Heldi Putri Fanggidae alias Fina because That with criminal prison for 3 (three) years and a fine amounting to IDR 5,000. 000,- (five million rupiah) with provision if fine the No paid , then will replaced with criminal confinement for 3 (three) months .
- c. Determine the detention period carried out Defendant deducted completely from the sentence imposed .
- d. Ordered that the Defendant still is at in prisoner .
- e. Set goods proof in the form of :
 - 1) 1 (one) stick crowbar with long around 1 meter color black .
 - 2) 1 (one) sheet batik motif sarong .
 - 3) 1 (one) piece of colored T - shirt gray Returned to Ricky Marlon Fangidae .
 - 4) 1 (one) fruit crowbar with length 40 cm color black .
 - 5) 1 (one) fruit carpet color red young . Returned to Morina Femi Animertha babies .
- f. Charge to Defendant For pay cost case amounting to IDR 2. 000,- (two thousand rupiah).

Different charges in Palopo District Court , Prosecutor Prosecutor General accuse No use Constitution Number 36 of 2009 concerning Health , Meanwhile at the Kupang District Court prosecutor Prosecutor General accuse with use Constitution Number 36 of 2009 concerning Health . Related with the Law Book Criminal Procedure Law (KUHP) based on Article 182 paragraph (4) is basic Panel of Judges for deliberation in frame drop decision is letter the indictment and the facts revealed at trial .

Palopo District Court in the charges demanded prosecutor Prosecutor General with Article 346 of the Criminal Code, while at the Kupang District Court in the the accusation prosecutor Prosecutor General demand with Article 194 of the Law Number 36 of 2009 concerning Health in conjunction with Article 55 paragraph (1) of the Criminal Code. Before drop decision , the judge based it on with the Law Book Criminal Procedure Law (KUHP) based on Article 182 Paragraph (4) basis Panel of Judges for deliberation in frame drop decision is letter the indictment and the facts revealed at trial .

According to economical author , based on explanation on can is known that before drop criminal to the defendant , the judge has base consideration as has been outlined on . From the basics consideration this is what the judge handed down criminal to the defendant , who is the defendant at the Palopo District Court prosecuted by the Prosecutor Prosecutor General with Article 346 of the Code Law Criminal Code (KUHP) vs backwards with defendant at the Kupang District Court prosecuted by the Prosecutor Prosecutor General with Article 194 Constitution Number 36 of 2009 concerning Jo's health . Article 55 paragraph (1) of the Code Law Criminal Code (KUHP), then from the judge decided based on letter the indictment and the facts revealed therein the judge based on Article 182 Paragraph (4) of the Law Criminal Procedure Law (KUHP).

Enforcement process law in criminal proceedings before the judge decides For do something decision so moreover formerly Panel of Judges for do discussion The Panel of Judges , namely is inside Article 182 Paragraph (3) of the Law Criminal Procedure Law (KUHP). After the Panel of Judges Finish do discussion then the judge will do decisions which are deliberative The Panel of Judges must based on letter indictment and evidence in existing hearings in Article 182 Paragraph (4) of the Law Criminal Procedure Law (KUHP). So base judge 's consideration decide something case is letter indictment and evidence at trial .

However based on analysis author , Panel of Judges at Kupang District Court in decision Number 242/ Pid.Sus /2015/PN.KPG no consider and study moreover formerly

letter indictment prosecutor Prosecutor General in nature alternative that is accuse with Article 346 of the Code Law Criminal Code (KUHP) which elements chapter the more dominant and more appropriate if applied . It means The Panel of Judges did not can see influencing factors Why defendant the do abortion in facts trial and testimony of witnesses . The panel of judges should too more consider that case abortion This more leads to follow criminal general No to follow criminal specifically , do it's not including from element follow criminal specifically which defendant No from group power expert health nor power expert medical like doctors , nurses , etc expert medical other .

On point case Palopo District Court Decision Number 01/ Pid.B /2013/PN.PLP incident follow The crime committed by the defendant is prosecuted and indicted by the prosecutor Prosecutor General use article 346 of the Code Law The criminal code (KUHP) was then decided by the Panel of Judges at the Palopo District Court with Article 346 of the Criminal Code. Compare backwards with indictment prosecutor Prosecutor General at the Kupang District Court in Decisions Number 242/ Pid.Sus /2015/PN.KPG which has been accuse defendant with Article 194 of the Law Number 36 of 2009 Concerning Health

E. CLOSING

Based on results discussion , then obtained conclusion as following :

1. Accountability criminal to perpetrator follow criminal abortion can found in a way firm in the Code Law Criminal Code (KUHP) is regulated in Articles 299,346,347,348 and Article 349 matter abortion performed power medical as well as non- medical and statutory Number 36 of 2009 concerning Health Articles 75,76,77 and Article 194 are carried out by personnel health / energy medical or perpetrator main and concerning join in as well as do set yourself in Article 55 paragraph (1) 1st of the Criminal Code.
2. Application law criminal to perpetrator follow criminal abortion this , that before drop criminal to defendant , elementary judge with the Law Book Criminal Procedure Law (KUHAP) based on Article 182 paragraph (4) is basic Panel of Judges for deliberation in frame drop decision is letter the indictment and the facts revealed at trial . With This is what the judge has base consideration as has been outlined on . From the basics consideration this is what the judge handed down criminal to defendant , whichever there is difference Article provided to the defendant , as well as threats The penalties are also different . But his actions You're welcome perpetrator follow criminal abortion .

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