



Case 212 K/Pid.Sus/2011/PN.Pso

Country: Indonesia

Region: Asia

Year: 2011

Court: Poso District Court

Health Topics: Sexual and reproductive health

Facts

The Defendant, Rahima S. Borahima, a doctor, had been approached by Ismawati Lakadjo on 16 April 2011, who requested that the Defendant help her abort her pregnancy. Lakadjo was 20-22 weeks pregnant, and was not yet married to her boyfriend because they were waiting until they had enough money. Lakadjo testified that she had been feeling stomach pains ever since she fell over in the bathroom, and the concern that her baby was harmed in the bathroom led her to approach the Defendant.

The Defendant ultimately agreed to perform the abortion for Rp. 800.000, to be paid partially upfront and partially by installments. The Defendant performed the abortion in her own home, by inserting a "Gastrul Pill" into Lakadjo's vagina. Three days later, on 19 April 2011, Lakadjo contacted the defendant again because she was suffering severe pains and genital bleeding. The Defendant removed the pill from her uterus, and the fetus exited. The fetus was then wrapped up in a cloth, and Lakadjo returned home and buried it beside her boarding house, before housemates took her to the local hospital.

Criminal charges were laid against the Defendant for:

- Intentionally and illegally performing an abortion;
- Intentionally aborting a fetus, with consent;
- Intentionally medicating a woman, or prescribing medicine to her, whilst informing her, or raising an expectation, that the medication may have ceased the pregnancy.

Under Indonesia's Criminal Code, it was an offence to "intentionally perform an abortion", unless the contraindication pregnancy endangered the lives of both the pregnant woman and the child; or the pregnancy resulted from a rape which had the potential to cause psychological trauma for the rape victim.

Decision and Reasoning

The Prosecution requested a sentence of four years imprisonment, and at trial, decided to pursue only the first charge of intentionally performing an abortion. The Defendant confessed to performing the procedure and did not contest the indictment.

The court sentenced the defendant to 10 months imprisonment and a 10 million Rupiah fine. Based on the witness testimonies, it found that the elements of the charge were met, and that none of the exceptions were proven on the facts. Borahima was thus guilty of performing an unlawful abortion. In determining the sentence, the Court cited as an aggravating factor the fact that the defendant was a civil servant, and thus a role model for other members of society, and noted that the act was against humanity and the religion of the Defendant. In mitigation, the Court noted the defendant's polite in-court behaviour, her honesty in confessing to performing an abortion, and the fact that she had dependents.

Decision Excerpts

"The defendant appearing before the court is RAHIMA S BORAHIMA, SE, who has admitted her identity in the indictment, and has also confessed that she committed the crime in this case. The defendant's testimony was supported by witnesses in the case. Based on this fact, the penal of judges is convinced and certain that there was no identification error in this case." [Page 15]

"Consider that based on the proven facts, the abortion was performed on Ismawati Lakadjo without a previous

examination conducted by a specialist doctor/general practitioner/midwife and without sending away tests to a lab, and the abortion was performed without prior examination from a counselor as to whether or not the fetus inside Ismawati Lakadjo was showing signs of emergency medical problems which threatened the life of both the mother and/or the fetus with suffering a serious genetic disease and/or congenital malformations, and which could not be cured, making it difficult for the baby to live outside the womb. Furthermore, the defendant was not a health worker who had the necessary skills or authority by way of a certificate endorsed by the minister. Based on these considerations, it has been proven that the defendant performed an abortion outside of the scope of the exceptions regulated by Article 75(2) of Law No 36 of 2009 concerning Health.â€•
[Page 16-17]

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