

POSO DISTRICT COURT

DECISION

No 212 K/ Pid.Sus (Special Criminal Division) / 2011/PN.Pso

For the sake of Justice under God Almighty

The Poso District Court examined and adjudicated this criminal case at first instance in usual proceedings, and handed down the following decision. In this case, the defendant is:

Full Name: RAHIMA S. BORAHIMA, SE

Birth Place: Una-Una (Sulawesi)

Age/Date of Birth: 48 years of age/17 January 1963

Sex: Female

Nationality: Indonesian

Address: Jalan Sungai Bongka (Street), Kel. Uentanaga Atas
Kec. (Sub-District) Ampana Kota,
Kab. (Regency) Una-Una.

Religion: Islam

Occupation: Civil Servant (Hospitals)

Education: Bachelor Degree

- Legal counsel for the defendant is Abdul Manan Abbas, SH. His address is No. 349 Umanasoli St, Poso, Central Sulawesi, according to the specific power of attorney document, dated 12 July 2011.
- The defendant was arrested under the following arrest warrant:
 - Arrested on 20 April 2011.
 - Investigated by the police from 21 April 2011 until 10 May 2011.
 - Prosecution continue the investigation from 11 May 2011 until 17 June 2011.
 - Prosecution inquiry from 17 June 2011 until 6 July 2011.
 - Hearing before the Panel of Judges from 27 June 2011 until 26 July 2011.
 - Extension by the Chair of the District Court from 27 July 2011 until 24 September 2011.
 - First Extension by the Chair of the High Court from 25 September 2011 until 24 October 2011.
 - Second Extension by the Chair of the High Court from 25 October 2011 until 23 November 2011.

The District Court now:

- Reads the order of the District Court No, 212/Pid.Sus/2011/PN.Pso, revealing how the Panel of Judges' examined and decided this case;
- Reads the Order from the Chair of the panel of judges from the court hearing;
- Reads and studies previous cases;
- Hears witness testimonies and the defendant's testimony; and
- Looks to any evidence used in the case.

The District Court considers that the prosecution charged the defendant as per the indictment No. PDM-20/07/2011, dated 20 June 2011, which primarily contains the following:

Primary Charge:

That the defendant. RAHMA S. BORAHIMA, from about 10:30pm on Saturday 16 April 2011, until about 3:30pm on Tuesday 19 April 2011, or at least on a day in April 2011, whilst located at her residence at No. 35 Jalan Sungai Bongka, Kel. Uentanaga Atas, Sub-District Ampana Kota, Tojo Una-Una Regency, or at least at a place within the jurisdiction of the Poso District Court, committed the offence of **intentionally conducting an abortion contrary to the regulations outlined in Article 75(2)**. The alleged offence occurred in the following way:

Beginning on Saturday 16 April 2011, at about 10:30pm, the defendant met with the witness, ISMAWATI LAKADJO Als. IMA, who discussed her problems with the defendant, revealing that she wanted to have an abortion. At that time, the fetus was about 4 (four) months old and ISMAWATI LAKADJO Als. IMA requested the defendant's help. The defendant agreed and was willing to perform the abortion if the witness, ISMAWATI LAKADJO Als IMA could pay a fee set by the defendant herself, of Rp. 800,000 (eight hundred thousand Rupiah). Ismawati then agreed to pay an upfront payment of Rp 350,000 (three hundred and fifty thousand Rupiah), and the remainder would be paid later.

The witness, ISMAWATI LAKADJO Als IMA, and the defendant entered a room, ISMAWATI LAKADJO Als IMA removed the long pants and underwear that she was wearing at the time, and then she put on a sarong garment. The witness, ISMAWATI LAKADJO Als IMA, then laid down with her thighs open, and the defendant inserted the 'Gastrul Pill' drug into the witness' vagina. After the 'Gastrul Pill' was fully inserted by the defendant, ISMAWATI LAKADJO Als IMA, put her underwear and long pants back on before, then left the defendant's house to await the effects of the 'Gastrul Pill'.

That ISMAWATI LAKADJO Als IMA called the defendant on Tuesday 19 April 2011 at about 2:30pm after the 'Gastrul Pill' reacted in her womb. At the time she received the call, the defendant was away from home, and the conversation indicated that the 'Gastrul Pill' that was inserted by the defendant

on Saturday, 16 April 2011, was currently reacting, or had already done so, inside the uterus. Because of this, the witness asked for the defendant to remove the fetus from her uterus, so the defendant and ISMAWATI LAKADJO Als IMA, agreed to meet at the defendant's home.

Following the cell phone conversation between the defendant and ISMAWATI LAKADJO Als IMA, the defendant went straight home. The witness, ISMAWATI LAKADJO Als IMA, made the phone call from outside the defendant's home, so when the defendant arrived back, ISMAWATI LAKADJO Als IMA, was already there. The defendant then invited ISMAWATI LAKADJO Als IMA, inside. When they were both in a room, ISMAWATI LAKADJO Als IMA, removed here long pants and underwear and put on an over-garment/sarong. She then lay down and spread her legs, and the defendant withdrew the 'Gastrul Pill' from the Ismawati's vagina. After withdrawing the pill, ISMAWATI LAKADJO Als IMA, began bleeding quite excessively, and moments later the fetus exited the womb. The witness, ISMAWATI LAKADJO Als IMA, then wrapped up the fetus and took it away from the defendant's home.

This charge against the defendant is regulated and punishable under Article 194 of Law No. 36 of 2009 concerning Health and Article 75(2) of Law No. 36 of 2009 concerning Health.

Subsidiary Charge:

That the defendant. RAHMA S. BORAHIMA, who works as a physician and a midwife, from about 10:30pm on Saturday 16 April 2011, until around 3:30pm on Tuesday 19 April 2011, or at least on a day in April 2011, whilst located at her residence at No. 35 Sungai Bongka St, Kel. Uentanaga Atas, Sub-District Ampana Kota, Tojo Una-Una Regency, or at least at a place within the jurisdiction of the Poso District Court, **“intentionally aborted or killed a fetus whilst inside a woman's uterus, namely of the witness ISMAWATI LAKADO Als IMA, with her consent”**. The alleged offence occurred in the following way:

Beginning on Saturday 16 April 2011, at about 10:30pm, the defendant met with the witness, ISMAWATI LAKADJO Als. IMA (in a separate file), and discussed her problems with the defendant, revealing that she wanted to have an abortion. At that time, the fetus was about 4 (four) months old and ISMAWATI LAKADJO Als. IMA requested the defendant's help. The defendant agreed and was willing to perform the abortion if the witness, ISMAWATI LAKADO Als IMA could pay a fee set by the defendant herself, of Rp. 800,000 (eight hundred thousand Rupiah). ISWATI then agreed to pay an upfront payment of Rp 350,000 (three hundred and fifty thousand Rupiah), and the remainder would be paid later.

The witness, ISMAWATI LAKADJO Als IMA, and the defendant entered a

room, ISMAWATI LAKADJO Als IMA removed the long pants and underwear that she was wearing at the time, and then she put on a sarong garment. The witness, ISMAWATI LAKADJO Als IMA, then laid down with her thighs open, and the defendant inserted the 'Gastrul Pill' drug into the witness' vagina. After the 'Gastrul Pill' was fully inserted by the defendant, ISMAWATI LAKADJO Als IMA, put her underwear and long pants back on before, then left the defendant's house to await the effects of the 'Gastrul Pill'.

That ISMAWATI LAKADJO Als IMA called the defendant on Tuesday 19 April 2011 at about 2:30pm after the 'Gastrul Pill' reacted in her womb. At the time she received the call, the defendant was away from home, and the conversation indicated that the 'Gastrul Pill' that was inserted by the defendant on Saturday, 16 April 2011, was currently reacting, or had already done so, inside the uterus. Because of this, the witness asked for the defendant to remove the fetus from her uterus, so the defendant and ISMAWATI LAKADJO Als IMA, agreed to meet at the defendant's home.

Following the cell phone conversation between the defendant and ISMAWATI LAKADJO Als IMA, the defendant went straight home. The witness, ISMAWATI LAKADJO Als IMA, made the phone call from outside the defendant's home, so when the defendant arrived back, ISMAWATI LAKADJO Als IMA, was already there. The defendant then invited ISMAWATI LAKADJO Als IMA, inside. When they were both in a room, ISMAWATI LAKADJO Als IMA, removed here long pants and underwear and put on an over-garment/sarong. She then lied down and spread her legs, and the defendant withdrew the 'Gastrul Pill' from the Ismawati's vagina. After withdrawing the pill, ISMAWATI LAKADJO Als IMA , began hemorrhaging, and moments later the fetus exited the womb. The witness, ISMAWATI LAKADJO Als IMA, then wrapped up the fetus and took it away from the defendant's home.

This charge is regulated and punishable under Article 349 and 348(1) of the Criminal Code.

Further Subsidiary Charge:

That the defendant. RAHMA S. BORAHIMA, who works as a physician and a midwife, from about 10:30pm on Saturday 16 April 2011, until around 3:30pm on Tuesday 19 April 2011, or at least on a day in April 2011, whilst located at her residence at No. 35 Sungai Bongka St, Kel. Uentanaga Atas, Sub-District Ampana Kota, Tojo Una-Una Regency, or at least at a place within the jurisdiction of the Poso District Court, **“intentionally aborted or killed a fetus whilst inside a woman's uterus, namely of the witness ISMAWATI LAKADO Als IMA, with her consent”**. The alleged offence occurred in the following way:

Beginning on Saturday 16 April 2011, at about 10:30pm, the defendant met with the witness, ISMAWATI LAKADJO Als. IMA (in a separate file), and

discussed her problems with the defendant, revealing that she wanted to have an abortion. At that time, the fetus was about 4 (four) months old and ISMAWATI LAKADJO Als IMA requested the defendant's help. The defendant agreed and was willing to perform the abortion if the witness, ISMAWATI LAKADJO Als IMA could pay a fee set by the defendant herself, of Rp. 800,000 (eight hundred thousand Rupiah). ISMAWATI LAKADJO Als IMA then agreed to pay an upfront payment of Rp 350,000 (three hundred and fifty thousand Rupiah), and the remainder would be paid later.

The witness, ISMAWATI LAKADJO Als IMA, and the defendant entered a room, ISMAWATI LAKADJO Als IMA removed the long pants and underwear that she was wearing at the time, and then she put on a sarong garment. The witness, ISMAWATI LAKADJO Als IMA, then laid down with her thighs open, and the defendant inserted the 'Gastrul Pill' drug into the witness' vagina. After the 'Gastrul Pill' was fully inserted by the defendant, ISMAWATI LAKADJO Als IMA, put her underwear and long pants back on before, then left the defendant's house to await the effects of the 'Gastrul Pill'.

That ISMAWATI LAKADJO Als IMA called the defendant on Tuesday 19 April 2011 at about 2:30pm after the 'Gastrul Pill' reacted in her womb. At the time she received the call, the defendant was away from home, and the conversation indicated that the 'Gastrul Pill' that was inserted by the defendant on Saturday, 16 April 2011, was currently reacting, or had already done so, inside the uterus. Because of this, the witness asked for the defendant to remove the fetus from her uterus, so the defendant and ISMAWATI LAKADJO Als IMA, agreed to meet at the defendant's home.

Following the cell phone conversation between the defendant and ISMAWATI LAKADJO Als IMA, the defendant went straight home. The witness, ISMAWATI LAKADJO Als IMA, made the phone call from outside the defendant's home, so when the defendant arrived back, ISMAWATI LAKADJO Als IMA, was already there. The defendant then invited ISMAWATI LAKADJO Als IMA, inside. When they were both in a room, ISMAWATI LAKADJO Als IMA, removed her long pants and underwear and put on an over-garment/sarong. She then lied down and spread her legs, and the defendant withdrew the 'Gastrul Pill' from the witness's vagina. After withdrawing the pill, ISMAWATI LAKADJO Als IMA, began hemorrhaging, and moments later the fetus exited the womb. The witness, ISMAWATI LAKADJO Als IMA, then wrapped up the fetus and took it away from the defendant's home.

This charge is regulated and punishable under Article 346 of the Criminal Code.

Final Subsidiary Charge:

That the defendant. RAHMA S. BORAHIMA, who works as a physician and a midwife, from about 10:30pm on Saturday 16 April 2011, until around 3:30pm on Tuesday 19 April 2011, or at least on a day in April 2011, whilst located at her residence at No. 35 Sungai Bongka St, Kel. Uentanaga Atas, Sub-District Ampana Kota, Tojo Una-Una Regency, or at least at a place within the jurisdiction of the Poso District Court, **“intentionally medicated a woman, or prescribed medicine to her, whilst informing, or raising an expectation, that the medication may cease her pregnancy”**. The alleged offence occurred in the following way:

Beginning on Saturday 16 April 2011, at about 10:30pm, the defendant met with the witness, ISMAWATI LAKADJO Als. IMA (in a separate file), and discussed her problems with the defendant, revealing that she wanted to have an abortion. At that time, the fetus was about 4 (four) months old and ISMAWATI LAKADJO Als. IMA requested the defendant’s help. The defendant agreed and was willing to perform the abortion if the witness, ISMAWATI LAKADJO Als IMA could pay a fee set by the defendant herself, of Rp. 800,000 (eight hundred thousand Rupiah). ISWATI then agreed to pay an upfront payment of Rp 350,000 (three hundred and fifty thousand Rupiah), and the remainder would be paid later.

The witness, ISMAWATI LAKADJO Als IMA, and the defendant entered a room, ISMAWATI LAKADJO Als IMA removed the long pants and underwear that she was wearing at the time, and then she put on a sarong garment. The witness, ISMAWATI LAKADJO Als IMA, then laid down with her thighs open, and the defendant inserted the ‘Gastrul Pill’ drug into the witness’ vagina. After the ‘Gastrul Pill’ was fully inserted by the defendant, ISMAWATI LAKADJO Als IMA, put her underwear and long pants back on before, then left the defendant’s house to await the effects of the ‘Gastrul Pill’.

That ISMAWATI LAKADJO Als IMA called the defendant on Tuesday 19 April 2011 at about 2:30pm after the ‘Gastrul Pill’ reacted in her womb. At the time she received the call, the defendant was away from home, and the conversation indicated that the ‘Gastrul Pill’ that was inserted by the defendant on Saturday, 16 April 2011, was currently reacting, or had already done so, inside the uterus. Because of this, the witness asked for the defendant to remove the fetus from her uterus, so the defendant and ISMAWATI LAKADJO Als IMA, agreed to meet at the defendant’s home.

Following the cell phone conversation between the defendant and ISMAWATI LAKADJO Als IMA, the defendant went straight home. The witness, ISMAWATI LAKADJO Als IMA, made the phone call from outside the defendant’s home, so when the defendant arrived back, ISMAWATI LAKADJO Als IMA, was already there. The defendant then invited ISMAWATI LAKADJO Als IMA, inside. When they were both in a room, ISMAWATI LAKADJO Als IMA, removed here long pants and underwear and put on an over-garment/sarong. She then lied

down and spread her legs, and the defendant withdrew the 'Gastrul Pill' from the Ismawati's vagina. After withdrawing the pill, ISMAWATI LAKADJO Als IMA , began hemorrhaging, and moments later the fetus exited the womb. The witness, ISMAWATI LAKADJO Als IMA, then wrapped up the fetus and took it away from the defendant's home.

This charge is regulated and punishable under Article 348(1) of the Criminal Code.

WITNESS TESTIMONIES

The District Court:

Considers, that the defendant and her legal counsel understand the prosecution's indictment, and raise no objections.

Considers, that witness testimonies have already been heard in the trial, with each giving a testimony under oath, as outlined below:

1. Samsul Nonci (witness testimony)

- That on Tuesday, 19 April 2011, at about 7:00pm, the witness got an SMS that Ismawati, from the boarding house on Yos Sudarso Street, had an intentional abortion.
- That Samsul Nonci, together with Ilham (another witness) and a member of the Ampana City Police Precinct, then went to the boarding house to retrieve the fetus, which was wrapped in a white blood-stained cloth and was buried beside the boarding house. Ismawati was very limp and pale at this time due to the excessive bleeding/hemorrhaging.
- That Samsul Nonci then took Ismawati to Amapana Regional Hospital.
- That the location where the fetus was buried was marked by a line of stones.
- That at the place of the incident, the witness found 2 (two) items of sarong clothing, 1 (one) pair of black shorts, 1 (one) pair of brown long pants, 1 (one) sheet of white cloth, all of which were covered in blood and were worn at the time of Ismawati's abortion.
- That when Samsul Nonci talked with Ismawati, Ismawati said that it was true that she had an abortion with help of the defendant, and that it was performed in the defendant's home at No. 35 Sungai Bongka St, Kel. Uentanaga Atas, Ampana Kota Sub-District, Tojo Una-Una

Regency.

- That the abortion was performed by defendant inserting a 'Gastrul Pill' into Ismawati's vagina.

The Court notes that the defendant states that this witness testimony is correct and true.

2. Ilham (witness testimony):

- That on Tuesday, 19 April 2011, at about 7:00pm, the witness was informed by Samsul Nonci (witness no. 1) that Ismawati from the boarding house on Yos Sudarso Street had an intentional abortion.
- That Ilham, together with Samsul Nonci and a member of the Ampana City Police Precinct, then went to the boarding house to retrieve the fetus which was wrapped in a white blood-stained cloth, which was buried beside the boarding house. Ismawati was very limp and pale at this time due to the excessive bleeding/hemorrhaging.
- That Samsul Nonci then took Ismawati to Amapana Regional Hospital.
- That the location where the fetus was found was marked by a line of stones.
- That at the place of the incident, the witness found 2 (two) items of sarong clothing, 1 (one) pair of black shorts, 1 (one) pair of brown long pants, 1 (one) sheet of white cloth, all of which were covered in blood and were worn at the time of Ismawati's abortion.
- That Ismawati initially denied what had happened, yet after being examined by the doctor, Ismawati admitted that the fetus came out because she had an abortion, with the help of the defendant, and that it was performed in the defendant's home at No. 35 Sungai Bongka St, Kel. Uentanaga Atas, Sub-District Ampana Kota, Tojo Una-Una Regency.
- That the abortion was performed by the defendant inserting a 'Gastrul Pill' into Ismawati's vagina.

The Court notes that the defendant states that this witness testimony is correct and true.

3. Ismawati Lakadjo (testimony from the victim)

- That on Saturday, 16 April 2011, at about 10:30pm, Ismawati, who was accompanied by Miss Ema, came to the defendant's home at No. 35 Sungai Bongka St, Kel. Uentanaga Atas, Ampana Kota Sub-District, Tojo Una-Una Regency.
- That Ismawati came with an intention to abort the fetus inside her womb, because she was afraid that the fetus was already harmed as a result of her recent fall in the bathroom.
- That the defendant then said that she could perform the abortion at a price of Rp. 800,000, due on the age of the fetus.
- That Ismawati agreed on this price, giving an up front payment of Rp. 350,000, and the rest would be paid in installments.
- That Ismawati then entered a room and was instructed to take off her long pants and underwear. The defendant then inserted the pill into Ismawati's vagina, but Ismawati stated that she did not know the name of the pill. She then returned home to await a reaction from the pill.
- That the following day, Ismawati began to feel stomach pains, and on Tuesday, 19 April 2011, she returned to the defendant's home because she was experiencing genital bleeding.
- That approximately half an hour after the defendant removed the pill from Ismawati, the fetus exited the witness' uterus, and was then wrapped up and taken back to her home.
- That upon arrival back at the boarding house, Miss Erna (a.k. Ema), with the help of a healer, cleaned the fetus before wrapping in a white cloth and burying it beside the boarding house.
- That at the time of the abortion, the fetus was four months old, and was the product of the relationship between Ismawati and her boyfriend, named Didin.
- That Ismawati and Didin were not yet married because he was still working to find money for the marriage.
- That Ismawati chose to get the abortion because of the stomach aches she felt after her fall in the bathroom, not because she felt embarrassed or ashamed that she was pregnant before marriage. Her boyfriend already promised that they would marry when they had enough money.

- That the witness, Ismawati, did not get a chance to read the criminal investigation report, but signed it anyway because she was still feeling sick after just coming out of the hospital following the abortion.

The Court notes that the defendant states that this witness testimony is correct and true.

4. Rosmin Rahma – a.k.a TA MINI (witness testimony)

- That on Tuesday, 19 April 2011, at about 6:30pm, Rahma was in her home on Lumba-Lumba Street, Kel. Uentanaga Bawah, Ampana Kota Sub-District, Tojo Una-Una Regency, when Ms Erna Harun (Ema) asked Rahma to come to her's boarding house on Yos Yudarso Street, Kel. Uentanaga Bawah, Ampana Kota Sub-District, Tojo Una-Una Regency.
- That when Rahma arrived at the boarding house, she saw the bundle containing the already-dead fetus.
- That the mother then asked Rahma to wash the fetus, and then wrap it up in the white cloth which was laid out for it, then give it to Ms Erna Harun (Ema).
- That the fetus was about 5 (five) months old; was already fully formed and was a male.
- That Rahma is used to helping mothers give birth.
- That according to Rahma, the fetus died because it was born prematurely or because of an abortion.
- That according to Rahma, there was an intentional abortion, because usually when there is an unintentional miscarriage, the fetus is under 3 (three) months old.
- That Rahma is uncertain of who the mother of the fetus is because there was an electricity blackout at the time, and Rahma only saw a women limply lying down.

The Court notes that the defendant states that this witness testimony is correct and true.

EXPERT WITNESS TESTIMONY

The court has already heard testimony from an expert witness under oath, **Dr Ferly Junita Lahay**, during the trial, as outlined below:

- That since 1 September 2010, the witness worked as a doctor at Ampana UD Hospital (RSUD) in the Emergency Treatment Ward.
- That on Tuesday, 19 April 2011, Dr Lahay examined Ismawati Lakadjo. Dr Lahay carefully examined Ismawati by palpating her stomach and uterus until reaching the pubic bone, finding that the opening to the uterus was soft and was about 2 cm dilated. By palpating the tissue and noticing the loss of blood, it could be concluded that Ismawati Lakadjo had an abortion.
- That what she meant by 'abortion', was the removal or exiting of the fetus less than 27 (twenty-seven) weeks into the pregnancy.
- That the woman who had the abortion was suffering excessive and constant bleeding, had a fever and was likely to get an infection if she did not receive emergency medical treatment.
- That an abortion is permissible if the mother-to-be has a serious infection, is currently suffering a severe illness, or if the fetus in the womb is unhealthy, thus endangering the fetus and/or the mother-to-be.
- That an abortion would be performed to protect the wellbeing of the mother-to-be and/or the fetus and should be performed following the advice from a specialist doctor if a general practitioner or a local midwife are not available.
- That at the time Dr Lahay examined Ismawati Lakadjo, the patient was in a very weak condition and suffering constant bleeding. This situation arose from the patient undergoing an abortion.
- That the patient, Ismawati Lakadjo, did not have any other physical illness or disease. The fetus was not examined by Dr Lahay.

The Court notes that the defendant states that this witness testimony is correct and true.

OTHER WITNESSES

Even though other witnesses are not present in court, they were previously called as per the requirements of the law and with the defendant's consent. The court has already read the witness testimonies from NURMILA LASAREWA (MILA), ERNA HARUN (Ema), and expert witness Dr MERDYANA DARKUTHNI, taken under oath during the investigation and included in the official criminal investigation report.

The Court notes that the defendant states that these witness testimonies are correct and true.

DEFENDANT'S TESTIMONY

Outlined below is the defendant's testimony, which was heard before the court:

- That on Saturday, 16 April 2011, at about 10:30pm, Iswamati Lakadjo and another woman came to the defendant's house at No. 35 Sungai Bongka St, Kel. Uentanaga Atas, Ampana Kota Sub-District, Tojo Una-Una Regency.
- That Ismawati came to the defendant's home with the intention of requesting the defendant to abort the four-month-old fetus in her womb because she felt that the child would not be born normal after falling over in the bathroom.
- That the defendant then examined Ismawati, and concluded that the fetus was 4 months old, was in a normal condition, and that there had not yet been any movement, however she did note a noise coming from the fetus (through the stethoscope). Also, Ismawati's blood pressure was quite low, with a reading below 10 Hb (Hemoglobin).
- That following this, because Ismawati insisted to do so, the defendant performed the abortion, based on a fee of Rp. 200,000 per month of age of the fetus. Therefore, the fee amounted to 4 x Rp. 200,000 = Rp.800,000.
- That Ismawati agreed to pay this price, but she could only afford to pay Rp. 350,000 upfront, and the remainder was to be paid in installments.
- That Ismawati then entered a room and was asked to remove her long pants and underwear, before the defendant inserted the 'Gastrul Pill' drug into Ismawati's vagina. Ismawati then went home to await the effects of the 'Gastrul Pill'.
- That on Tuesday, 19 April 2011, at about 3:00pm, Ismawati returned to the defendant's home in a critical condition when she was already suffering vaginal bleeding.
- That about half an hour later, the defendant removed the 'Gastrul Pill', and the fetus soon exited Ismawati's womb. The fetus was then

wrapped up and taken back to Ismawati's home at the boarding house.

- That the defendant inserted the 'Gastrul Pill' into Ismawati's vagina with the aim of aborting the fetus inside her womb.

PROSECUTION SUBMISSIONS:

The court now considers the submissions from the prosecution:

1. The written testimony regarding the forensic examination at Ampana Regional General Hospital, document No. 474.3/061/RM/06-11/RSUD Amp, dated 9 June 2011, signed by Dr Merdyana Darkuthni, concluded that the fetus was of the male sex, was not alive when it exited the womb, and was aged between twenty and twenty-two weeks. No signs of violence were found, nor were any signs of other medical treatment.
2. The written testimony regarding the forensic examination at Ampana Regional General Hospital, No. 474.3/059/RM/05-11/RSUD Amp, dated 30 May 2011, signed by Dr Ferly Junita Lahay, concluded that after palpating the stomach and uterus until reaching the pubic bone, the opening to the uterus was soft and was about 2 cm dilated. By palpating the tissue, noticing the loss of blood, and from the supporting positive pregnancy test results, it could be concluded that an abortion had occurred.

The following pieces of evidence have been submitted in the trial:

- 2 (two) sarongs
- 1 (one) pair of black shorts
- 1 (one) pair of brown long pants
- 1 (one) piece of white cloth

These pieces of evidence have been seized in accordance with the law and have been shown in court, before the witnesses and the defendant.

The court considers that the prosecution laid criminal charges on 26 September 2011, which essentially submitted to the panel of judges to examine the following and adjudicate the case as follows:

1. The court should hold that the defendant, RAHIMA S. BORAHIMA, SE is proven to have validly and convincingly committed the criminal offence of "intentionally performing an abortion outside the scope of Article 75(2)", as regulated and punishable under Articles 194 and 75(2) of Law No. 36 of 2009 concerning Health as per the primary indictment.
2. The court should acquit the defendant, RAHIMA S BORAHIMA, SE of the subsidiary charges, which were laid based on Articles 294 and

348(1) of the Criminal Code, the further charge under Article 348(1) of the Criminal Code, as well as the remaining charge under Article 299(1) of the Criminal Code.

3. The court should sentence the defendant, RAHIMA S BORAHIMA, SE to criminal imprisonment for 4 (four) years, less any time for which the defendant has already been in detention, as well as a fine of Rp. 10,000,000 (ten million Rupiah), and a subsidiary punishment of 3 (three) months of confined imprisonment with 'Pistole rights' (additional rights to improve their living conditions in the cell).
4. The court should hold that the following pieces of evidence were used in other cases:
 - 2 (two) sarongs
 - 1 (one) pair of black shorts
 - 1 (one) pair of brown long pants
 - 1 (one) piece of white cloth
5. The court should determine that the defendant must pay the court costs of Rp 1,000 (one thousand Rupiah).

Consider that in response to the above criminal charges, legal counsel for the defendant has submitted a defence in pleadings, dated 24 October 2011.

Consider that despite those defences, the prosecution maintains its position regarding the charges, and the defendant's legal counsel also continues to pursue their defence arguments.

Consider that based on the accumulation of the witness testimonies, the defendant's testimony, and the physical and documentary evidence, the following facts of law are gathered:

- That on Saturday, 16 April 2011, at about 10:30pm, Ms Ismawati Lakadjo came to the defendant's home at No. 35 Sungai Bongka St, Kel. Uentanaga Atas, Sub-District Ampana Kota, Tojo Una-Una Regency, to get an abortion.
- That the defendant performed the abortion for Ismawati lakadjo, for a fee of Rp. 800,000, and Ismawati then gave the defendant Rp. 350,000 as an upfront payment.
- That to perform that abortion, the defendant inserted a 'Gastrul Pill' into Ismawati's vagina, and Ismawati then returned home to await the effects of the drug.
- That use of the 'Gastrul Pill' can cause the fetus to die.

- That as a result of this procedure, on Tuesday, 19 April 2011, at about 3:00pm, Ismawati lakadjo returned to the defendant's home when she was already experiencing severe vaginal hemorrhaging.
- That the fetus then came out of Ismawati's uterus, and was then wrapped up in a white cloth before Ismawati brought it back to her home and buried it beside her boarding house.
- That the defendant is a civil servant who does not have scholarly or practical expertise in performing abortions.
- That the defendant inserted the 'Gastrul Pill' into Ismawati's vagina, indeed with the intention of aborting the fetus inside Ismawati, without a previous examination conducted by a specialist doctor/general practitioner/midwife and without sending away tests to a lab.
- That the fetus was not alive when it exited the uterus, and it was about twenty to twenty two weeks old.

Consider that the court will now consider whether the defendant's act satisfies the elements of the criminal charges laid by the prosecution. The primary charge alleges that the defendant is to be sentenced for violating Article 194 and Article 75(2) of Law No. 36 of 2009 concerning Health. In order to make out this offence, the defendant's act must satisfy the following criteria:

1. The 'any person' element
2. The element of 'intentionally conducting an abortion contrary to the regulations outlined in Article 75(2)'.

1. The 'any person' element:

Consider that the 'any person' element means any individual person or legal body as one with legal rights and liabilities.

Consider that 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.

Consider that based on these findings, the first element if made out.

2. The element of 'intentionally conducting an abortion contrary to the regulations outlined in Article 75(2)'.

Consider that according to an expert witness, what is meant by 'abortion' is the removal of a fetus before it is 27 weeks old.

Consider that it has been found before this court, as facts of law, that the defendant inserted a 'Gastrul Pill' into the vagina of Ismawati Lakadjo, the victim, and then wrapped up the fetus in a white cloth for Ismawati to take home and bury besides the boarding house where Ismawati resides. It is also proven that the fetus was not alive when it exited the womb, and was approximately twenty to twenty-two weeks old. These facts prove that the defendant performed an abortion for Ismawati Lakadjo.

Consider that these facts are consistent with the forensic examination report by Ampara Regional General Hospital, (Report No. 474.3/059/RM/05-11/RSUD Amp), dated 30 May 2011, which was signed by Dr Ferly Junita Lahay, and concluded that after palpating the stomach and uterus until reaching the pubic bone, the opening to the uterus was soft and was about 2 cm dilated. From palpating the tissue and noticing the loss of blood, it could be concluded that Ismawati Lakadjo had an abortion.

Consider that the panel of judges will now determine whether the defendant performed the abortion for Ismawati Lakadjo as regulated by Article 75(2).

Consider that Article 75(2) provides that abortions are forbidden, unless one of the following exceptions are met:

- a. where there is a medical emergency detected from the beginning of the pregnancy, which threatens both the life of the mother and/or the fetus with suffering a serious genetic disease and/or congenital malformations, and which cannot be cured, making it difficult for the baby to live outside the womb; or
- b. where the pregnancy resulted from a rape which may cause psychological trauma for the rape victim.

Consider that according to Article 75(3) of Law No 36 of 2009 concerning Health, the exceptions referred to paragraph (2) can only be permissible after receiving counseling and/or advice in relation to the act as well as continuing that counseling following the procedure. This counseling is to be conducted by a competent and qualified counselor, and in accordance with the elucidation of the above provision. The term 'counselor' in this provision means any person who has obtained a counseling certificate following education and practical experience. Persons who can become a counselor are doctors, psychologists, public figures, religious figures and any person who has the interest and skills for the job. Furthermore, Article 76 of Law No 36 of 2009 concerning Health, stipulates that an abortion can only be performed by a health worker who has the skills and an authorized certificate endorsed by the minister.

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.

Consider that based on the above reasoning, the second element of the offence has been made out.

Consider that based on the above findings and considerations, the panel of judges hold that the standard of proof for each element of the primary charge is satisfied, such that the defendant is validly and convincingly proven to be guilty of the criminal offence in the primary charge.

Consider that during the trial investigations, the panel of judges did not obtain any justification or remorseful arguments from the defendant, so the panel of judges did not have any arguments which can relieve the defendant from her criminal liability. The defendant must therefore be held responsible for the wrong committed and must be sentenced to imprisonment and receive a fine, as outlined in this holding, with the proviso that in lieu of the fine not being paid, the prison sentence will be lengthened as outlined in this holding.

Consider that the defendant has already been arrested and has been lawfully detained, and the time for which she has already been detained will be taken off the sentence handed down by this court.

Consider that the panel of judges did not get receive any further reasons why the defendant should be freed from detention, so the defendant must remain in custody.

Consider that the following item of evidence:

- 2 (two) sarongs
- 1 (one) pair of black shorts
- 1 (one) pair of brown long pants
- 1 (one) piece of white cloth

are also being used in case No. 211/Pid.Sus/2011/PN.Pso, and will continue to be used for that case.

Consider that because the defendant has been found to be guilty, she must bear the full extent of the court costs, as outlined in this holding.

Consider that before the Panel of Judges hands down the sentence, the court will consider the following aggravating and mitigating factors:

Aggravating Factors:

- The defendant's act is against humanity and the religious teachings which she adopts and claims to follow;
- The defendant is a civil servant who should be a role model for other members of society.

Mitigating Factors:

- The defendant behaved politely in court;
- The defendant honestly confessed her actions;
- The defendant regrets her actions;
- The defendant has family dependents.

Consider that based on these considerations, the panel of judges believes that the sentence which will be handed down is in line with the community's sense of justice in response to the defendant's act.

In view of article 194 and 75(2) of Law No. 36 of 2009 concerning Health, Law No 8 of 1981 concerning Code of Criminal Procedure and other relevant and valid laws and regulations, the Court decides as follows:

DECIDING:

1. The Court states that RAHIMA S BORAHIMA, SE is proven to have validly and convincingly committed the criminal offence of "**conducting an abortion**".
2. The Court sentences the defendant, RAHIMA S. BORAHIMA, SE to imprisonment for 10 (ten) months, with a fine of Rp. 10,000,000 (ten million Rupiah), with the provision that if the defendant does not pay the fine, then an extended sentence of 2 (two) months of prison containment (with 'Pistole rights') will be imposed.
3. The Court determines that the time for which the defendant was arrested and detained will be deducted from the imposed sentence.
4. The Court orders that the defendant remain in detention.
5. The Court determines that the following pieces of evidence were used in the case:
 - 2 (two) sarongs
 - 1 (one) pair of black shorts
 - 1 (one) pair of brown long pants
 - 1 (one) piece of white cloth.

6. Court costs amounting to Rp. 1000 (one thousand Rupiah) are to be borne by the defendant.

The Poso District Court decides as above from deliberations on Thursday, 10 November 2011, by **YANCE PATIRAN, SH. MH** (Chairperson judge), **ADIL KASIM, SH. MH** and **IVAN BUDI HARTANTO, SU. MH**. The above decision was announced in open court on Monday, 14 November 2011, led by the chairperson judge with the other aforementioned judges, and assisted by **Lousje H Kumowal, SH**, the deputy registrar. Also in attendance are **Deni Marincka, SH**, the prosecutor from the Ampana District Prosecution Office, and the defendant, who was accompanied by legal counsel.

Members of the Judiciary:

- YANCE PATIRAN, SH.MH. (Chair);
- ADIL KASIM, SH. MH;
- IVAN BUDI HARTANTO, SH.MH.

Deputy Registrar (Transcriber)
LOUSJE H KUMOWAL, SH.