

A Study of Knowledge, Attitudes and Understanding of Legal Professionals about Safe Abortion as a Women's Right



IN INDONESIA





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Background: Sexual and Reproductive rights and health for the women of Asia sometimes appears to be a distant vision. The ICPD, the Millennium Development Goals and the Beijing Declaration notwithstanding, maternal mortality continues to be high in many parts of Asia and patriarchal society structures reinforce women's lack of autonomy and decision making capacities thus putting their lives at risk on a daily basis through deprivation, physical and sexual violence, rape, unsafe abortions, and others. Unsafe abortions still contribute to 13-50 % of the maternal mortality in some of these countries.

The Asia Safe Abortion Partnership (ASAP) www.asap-asia.org was formed in March 2008 as the regional network supported by the International Consortium for Medical Abortion (ICMA) www.medicalabortionconsortium.org. The objectives of ASAP are to promote new technologies for safe abortion, serve as a forum for information and experience sharing, strategic thinking and planning for a collective vision aimed towards regional/ international advocacy and support members to advance the partnership goal in their country contexts through law and policy advocacy, capacity building, research and documentation and service delivery.

The ultimate goal of ASAP is : "To promote, protect and advance women's sexual and reproductive rights and health in Asia by reducing unsafe abortion and its complications; and where it is legal, by promoting access to comprehensive safe abortion services."

A number of studies, particularly in the recent past have looked at the issue of safe abortion services, their reach and the perspective of both users and service providers. Therefore, ASAP planned a multi-country study that went beyond the community- provider interface and explored

the views of gatekeepers such as lawmakers and implementers who are outside the service provision field. A survey of legal professionals and law enforcement officials was planned with a view to assess their level of understanding and support for safe abortion as a women's right and public health issue in countries where abortion laws are restrictive and where it is legal.

The aim of the study was to obtain an understanding of the differences in knowledge, attitudes and understanding among legal professionals and law enforcement officials towards women's rights to safe and legal abortion in countries where abortion is severely restricted and where it is legal, in order to inform the strategies for advocacy to liberalize abortion in those countries.

In order to make significant changes in improving access to safe abortion reforming national laws and policies (especially in restrictive environment); setting forth more effective principles and guidelines for public information and service delivery (in countries with more liberal policies); and other changes may be critical. When it comes to examining the law as it is and the law as it should be, it is therefore important and necessary to look at the role of the legal profession as agents of change.

The legal profession, in its first sense, means not only the private practitioners, but also the judges, magistrates, law students, and law professors (academe). Lawyers after all, make use of the law to defend or prosecute women or abortion service providers who are held to account under the law; the academe's opinions are consulted by the judges and magistrates who in turn, interpret the provisions of the law and decide the fate of the woman/service provider accordingly. Legal experts (whether private practitioners, members of the judiciary or the academe) are always at the forefront in legislative advocacy - drafting of bills, as well as providing legal expertise and support for the sponsors

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of proposed legislative measures, to ensure that the proposed measure measures up to the agreed-upon standards, i.e., the Constitution and in many cases, the state's international commitments.

The court is a powerful arena to effect changes in society. Through the avenue of the courts, restrictive laws may be stricken down as invalid; failure to implement the law by state agents, may hold these state agents liable, in their official as well as personal capacity; refusal to heed the requirements of the law, may also compel the courts to enforce compliance by these state agents. Needless to say, the role of the lawyer in advocating for these reliefs, and of the judges / magistrates in deciding to grant and ordering the reliefs sought, are important in society purporting to be under the rule of law, where society evolves and changes are effected, in part, through the courts and justice system.

Legal profession, when used in this study, however, does not simply refer to those who have had formal schooling in law and are bestowed the titles as such. This study adopts an expanded definition of the legal profession and includes also legislators, high ranking police personnel, jailers, medical practitioners, head of hospitals, and other persons who are tasked with the implementation of the law, as well as those whose opinion and experience may be given weight in legal and policy advocacy.

While the members of the legal profession are important agents of change in society, they cannot effect lasting change on their own. We recognize that these changes in the field of law and policy need to be propelled and informed by the experiences and wisdom of those at the ground level in the implementation of the law.

The study findings are expected to help in a greater understanding of the perspectives of this group and will inform future capacity building, attitude reconstruction efforts and the development of advocacy tools for action.

Research Questions:

The main research questions asked were:

- Are legal and law enforcement personnel aware of the abortion related law in their country?
- What is their attitude towards access to safe abortion being seen as a women's right?
- What is their understanding of safe abortion (or lack of it) as a social justice and public health issue?
- What impact do they perceive this has on access to safe abortion by the women in their country?
- What influences their position vis a vis women in the community in the context of the right to safe abortion services?
- What interventions can be recommended to ensure a more supportive role for these persons in enhancing women's right to safe abortion?
- What can be recommended to improve the situation for women in these countries to improve their access to safe abortion services?

Methodology:

Semi structured questionnaires were administered to 27 members of the legal profession⁵, law enforcement officials⁶, law students, representatives of various commissions such as the Human Rights Commission and an Obstetrician and gynaecologist in Indonesia.

An attempt has been made to identify those members who are involved in handling abortion related cases, or are in a position to influence policy debate, decision making process

5. Legal profession to include law students, practicing lawyers, magistrates, judges. 6. Police personnel, Jailors, women cell, and medical practitioners (Obs & gyne of government hospitals responsible for providing post abortion care to women with complication of unsafe/ clandestine) can be included in the sample.

of the judiciary. Strict confidentiality was maintained of the identity and coding was used.

The researchers did make a concerted attempt to identify those members who are involved in handling abortion related cases, or are in a position to influence policy debate, decision making process of the judiciary. However, in absence of persons from amongst the law professionals who had handled abortion cases, the interviews were conducted with representatives from the profession who were willing to discuss the issue.

Strict confidentiality was maintained of the identity and coding was used. The location and names of the respondents was coded using unique numeric codes. The master list of names and codes was available only with the principal investigator of the study and till the completion of data collection (to ease repeat access in case of incomplete interview). No other person associated with the study had access either to the name or the exact location of the respondents. This ensured that the confidentiality of the respondents was maintained.

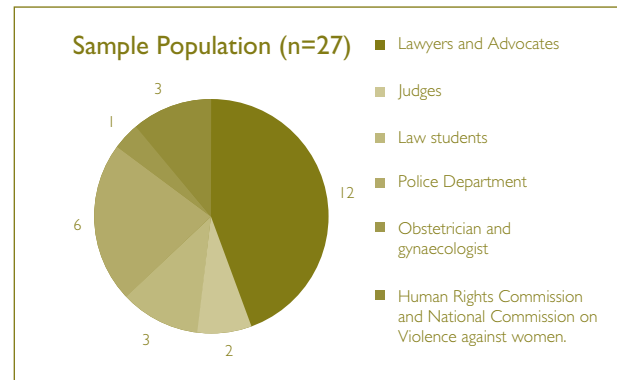
Analysis focus

Interviews were transcribed. They were coded and analysed using Atlas Ti. Analysis was also done manually as and when necessary. Secondary data analysis was carried out to describe the legal context of the communities under study.

Analysis was done to describe and demonstrate patterns, emerging themes, and specific characteristics linked to

1. Abortion laws, rationale, law enforcement mechanisms
2. Knowledge, attitudes, and perceptions amongst law professionals, enforcement officials and gatekeepers regarding unwanted pregnancies and abortion (safe / unsafe)
3. Differences in knowledge, attitudes, and

perceptions amongst law professionals and enforcement officials regarding abortion laws, rationale, law enforcement mechanisms



Sample: The team interviewed a total of 27 respondents. Twelve of these represented the lawyers and advocates (one of the lawyers also happens to be a Member of Parliament), 2 were judges and 3 law students. Six respondents were from the police department, 1 Obstetrician and gynaecologist and 3 representatives of various commissions such as the Human Rights Commission and National Commission on Violence against women.

Findings

The findings from the interviews are presented against the overview of the abortion statistics and the legal context of abortion in the country.

Context in Indonesia

In Indonesia the exact incidence of abortion is there fore difficult to assess. Although abortion is illegal, analysts say **around 2 million Indonesian women each year get an abortion**, accounting for around 70-percent of all terminations in South-East Asia. A survey of service providers in both urban and rural settings estimated that two million women sought medical intervention for pregnancy termination in the year 2000, and more than half

of these were induced abortion⁷. This number is derived from a study of a sample of health care facilities in six regions, and it includes an unknown, though probably small, number of spontaneous abortions (miscarriages) that required medical attention. WHO in 2008 estimated that 20-60 percent of abortions in Indonesia were induced abortions and half of these were in urban areas.

Most of these abortions are in the **first trimester in women in the 20-29** age bracket, most of when are married and educated. In a clinic based study in 2000 two-thirds of abortion clients were married, had secondary school education. and almost half had at least two children.

Overtime, in Indonesia the demand for abortion services has grown due to the pressure to delay marriage, the restriction to 2 children, the desire for small families, and the increase in unwanted pregnancy among the unmarried. Most married women sought abortions in case of poverty, ill health, failed contraception, medical conditions in the foetus and rape-induced pregnancy. Most women had an unmet need for contraception and terminated the pregnancy because they did not want to have more children. Studies show that as many as 17 percent of the births in a year are unwanted or mistimed.

On the other hand, the unmarried women had abortions to get rid of the unwanted pregnancy and to continue their education before getting married. These women in Indonesia have poor access to reproductive health services and the government family planning services are not legally permitted to provide contraception to single. An ethnographic study in the late 90's had found that though providers carried out abortions amongst unmarried women, their attitudes were unsympathetic and hostile. These women faced humiliation, compromised marriage prospects, abandonment by their partners, single motherhood, a stigmatised child, early cessation of education, and an interrupted income or career.

Three fourths of the urban non-poor and half of their rural counterparts accessed services from physicians, nurses or trained midwives. Physicians generally used various methods such as dilation and curettage, menstrual regulation, vacuum curettage (the mostly widely used method), saline injections, and prostaglandin suppositories for terminating the pregnancies. The traditional methods involved "pijat" or kneading and punching of the abdomen, "jamu" or oral herbal remedies, and "jamu sticks" which are inserted into the vagina and cervix. As a result, the poor rural women who predominantly accessed the traditional birth attendants and the healers (dukun) who used these unsafe methods for termination were found to have a high probability of complications (44%).

In Southeast Asia, every year about three out of 1,000 women in the reproductive age group are hospitalized for abortion-related complications. Though no figures are available about women do not seek treatment at a hospital, the often clandestine nature of the procedure suggests that the actual complication rate is likely to be significantly higher than the hospitalization rate. Abortion complications include severe bleeding, infection, genital and abdominal injuries, uterine perforation and even maternal deaths. As per the WHO estimates unsafe abortions attribute to 14 percent of maternal deaths in Southeast Asia, and 16 percent of maternal deaths countries like Indonesia where abortion laws are restrictive. Complications from induced abortion are a major cause of maternal mortality in Indonesia. **According to the Indonesian Health Ministry abortions constituted 30 to 50 per cent of Indonesia's total number of maternal deaths.**

Induced abortion is illegal and therefore a criminal offence in Indonesia. Under section 348 of the Indonesian Criminal Code ((Kitab Undang Undang Hukum Pidana or KUHP), enacted in 1918 by the Dutch colonial Government, any person performing an abortion is subject to imprisonment for five and a half years. Under section 346 of the Code, a

7. Utomo B et al., Incidence and Social-Psychological Aspects of Abortion in Indonesia: A Community-Based Survey in 10 Major Cities and 6 Districts, Year 2000, Jakarta, Indonesia: Center for Health Research, University of Indonesia, 2001.

woman wilfully inducing her own miscarriage is subject to imprisonment for up to four years. In addition, physicians, midwives, and pharmacists are subject to harsher penalties, including the revocation of their licence to practise their profession.

As early as 1960s, the Indonesian Association of Obstetrics and Gynaecology (POGI) that was alarmed with the abortion complications, highlighted the dangers of the procedures done by untrained dukun/ personnel and the high case load of septic abortion cases at hospital maternity wards, advocated reform of these laws to allow doctors to provide safe terminations of pregnancy. In the 1970's with the Chief Justice of the High Court intervention the medical professionals were permitted to perform abortions to preserve a woman's life or health. Subsequently, in 1987, in response to the continued pressure from the legal and medical professionals and women's organizations to reform the law, the government set up an interdepartmental committee. This committee with representatives from Health, Religion and Justice, Police, the Attorney General's Office, and academic institutions was to draft an abortion bill. This draft bill on Pregnancy Termination for Health Considerations was passed into law in September 1992.

The 1992 Health Law (Undang-Undang Kesehatan) specified that "in the case of emergency and with the purpose of saving the life of a pregnant woman or her foetus, it is permissible to carry out certain medical procedures". At the same time, the edict that "Abortion in any form is not permitted" was not revoked. The language on abortion was vague and therefore led to practices not stipulated under the law, but that became mandatory pre-requisites for service provision- such as a positive pregnancy test result, confirmation from a doctor that the pregnancy is life threatening, consent of the husband or a family member, and a statement guaranteeing that the woman will practice contraception afterwards. Unfortunately with these conflicting statements and practices and in the absence of Government Regulation, safe abortion services could not

be implemented and made accessible for women till date.

A group of NGOs led by the Indonesian Women's Health Foundation (YKP) that lobbied for law reforms was able to garner support from majority of political parties, and gained parliamentary approval for a draft amendment that would have made abortion both safer and more easily available. The earlier abortion bill that was approved by the country's Parliament, did not acquire the required legitimacy in absence of the President's signature. The president came under pressure from an Islamist group that warned against any attempts to legalise abortion. Rather, after discussions in the newly formed DPR Commission IX for Population, Health, Labour Force and Transmigration, the Health law underwent complete change and included negative references to abortion as a concept and conditions under which women were allowed abortions. In September 2009 the DPR voted to adopt the proposed Health Law that allowed abortions till six weeks in cases of rape and medical emergencies. Under the new Health Law no. 36/2009, the government permitted abortion in rape cases but not for incest. The law specified pre and post abortion counselling by a trained and competent counselor / provider, approval of the woman's husband except in cases of rape and procedures only by certified medical practitioners. It is also mentioned in the law that the pregnant woman is formally married except for the case of rape.

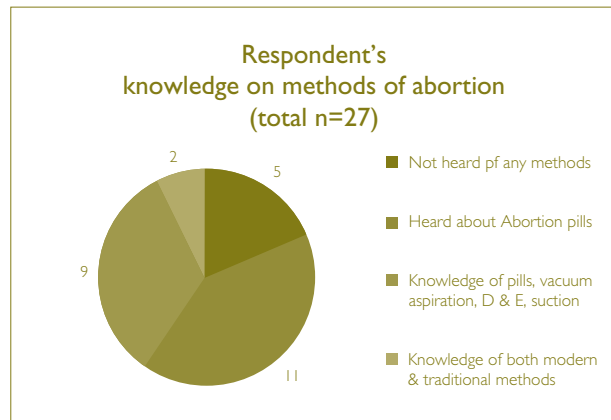
Health Minister justified this retrograde step as, ***"This is still a sensitive issue that is controversial in our society. Not everyone can accept such practices. The law still cannot accommodate the provision of safe abortion"***

Knowledge of respondents

Only three respondents have actually dealt with abortion related cases. A few respondents said that they have dealt with issues like adultery, extra marital relations etc. but not with abortions. The source of their information on abortion was therefore media or other reports and TV. However, seventeen of them were interested in knowing more about abortion and abortion laws.

Abortion trends

Most of the respondents had no idea about the number of abortions taking place in the country. Of the three who quoted some figures one said 2.5 million the other said one million which the third one said 30%-35% of all medical cases at a clinic. The reasons for seeking abortions were mentioned as economic reasons, lack of knowledge about contraception, spacing, women's and child health issues, pregnancies out of wedlock, rape, incest, and contraceptive failure. There was a wide range of opinion about the profile of women who undergo induced abortions. Some respondents talked about induced abortions being common in younger, unmarried and poor women while others had diametrically opposite views. Almost half the respondents said (14/27) that mostly the abortion were unsafe.



The respondents were asked about the techniques or methods of abortion. Five confessed that they did not know of any method of abortion. Eleven respondents said that they had heard of abortion pills. While nine talked about pills, vacuum aspiration, D & E, suction etc. The remaining respondents knew of both modern & traditional methods.

Abortion laws

Awareness about the abortion related laws was poor. Nine of the respondents said that abortions were illegal or

prohibited in the country. Eleven said it was permitted said so only in cases that had medical reasons as per the health law. Except four who talked about Dutch colonial period from whom they had inherited these laws, the others were unaware about the history. Almost half the respondents did not know the stipulations under the law. Six said that it was allowed anywhere from 90 to 120 days of gestation, and two said that if it is in interest of mother /medical reason then should be done any time no matter how many months. As far as consent is concerned, more than half (15/27) were not sure about whose decision and consent was valid in absence of medical complications. Three respondents said that it is the women themselves should decide, while one respondent said that women along with her partner and family members should decide about pregnancy. Those six who felt that others could decide specified that the person could be from the legal aid cell, the parents/guardians or partner/family member of the woman.

A judge elaborated on the stipulations under the law, *“Referring to the Law, abortion is permitted under specific condition: it should be performed at the hospital based on judgment that the pregnancy endangers the mother's life. Abortion has hitherto been permitted due to medical reasons. And everybody knows that unwanted pregnancy may not be used to legitimise abortion”.*

One law student said, *“Initially abortion was prohibited by law. Health Law allows abortion under limited conditions but the law is not comprehensive enough since it does not specify protection for abortion due to rape. It also does not specify the time, but only the conditions such as medical or psycho-medical reasons. Various violations have occurred due to law enforcement issues such as lack of awareness about the prevailing law regarding abortion”.*

Most respondents were not aware of abortion laws in other countries but half of them were aware their country was a signatory to ICPD and/or CEDAW.

The lack of awareness was not surprising as except four respondents who had access to the law related this

information the others had had no exposure or access to updates on safe abortions. Nineteen respondents said that abortion laws weren't a part of the syllabus the remaining said that it was covered as a part of some subject. Half the respondents however felt that it should be included in the curriculum.

Implementation and enforcement mechanism

Twenty one respondents felt that the police had role in the matter. In almost all cases the role was seen to be that of an investigator, law enforcer and penalty executor. A few said that the police had a passive role. A lawyer elaborated on the implementation system, ***“There is a specific system which is called CJS (Criminal Justice System). This involves investigations by police, prosecution by attorney, and trial by judge. The police's role ends with submitting the Berita Acara Pemeriksaan (BAP) (the formal report of investigation) to the attorney. Police do not access to the court ruling; they even have to pay for getting such information”.***

Legal outcome and trends

Based on what they had heard or read 17 respondents said that the women is charged and ten said that after losing the women was convicted/ punished. A few said that only the clinics and doctor are target of police. The remaining responses were rather unclear.

One of the respondents, a judge, was categorical about the quantum of punishment being proportionate to the role played and the context of the professional responsibilities, ***“Social, religious, or marriage status does not influence where there is alleviating/aggravating evidence. For example, doctors and nurses hitherto become the accused since they must know that abortion may not be done outside the hospital and for reasons other than specified under the law, but they do it anyway. The punishment should be more for those who know that it is prohibited by law than ordinary people who are not knowledgeable and who have different ways of thinking”.***

Very few respondents (6) said that the trend of judgments passed was based on normative positivism or fair justice, mild judgment, based on facts, conviction and punishment,

depended on evidence. Others, mainly in view of lack of exposure to such cases, were rather unclear about the trend of judgments passed. One third respondents were of the opinion that class, religion or income did not impact the legal outcome. But three mentioned that social background, attitude and behavior of the woman and influence of religious leaders decided the legal outcome and trends. Only one respondent said that the outcome depended on individual law official. When asked if lawyers avoided dealing with such cases, seven of them said “No” they don't avoid dealing with such cases. Some said that it depended on what type of case it was.

Attitudes

Relevance of the Act and Need for Amendments

Since many were unaware of the law itself, the relevance of the law was not discussed by them. Also, three fourths of the respondents had no clear thoughts on the current issues that were important in defining favorable /unfavorable environment for amendments in the existing law. Some did mention the negative influence of religion, socio-economic environment and public opinion. While others talked about the thrust provided by human rights group, professional bodies, law department and NGOs which was a positively influence.

Abortion as Women's Right, Public Health or Social Justice Issue

Majority (20/27) agreed that abortion is a women's rights issue. One lawyer defined women's rights as, ***“Women have rights upon their own body, not only regarding abortion. And they are the ones who have to take the responsibility and bear the consequences of the decisions they make about their own body.”***

Of the remaining only two disagreed with this view. The rest simply did not have any opinion. A legal professional who was opposed to the very concept of termination of an unwanted pregnancy, gave his reasons, ***“Fetus is a Gift of God. My conscience cannot accept abortion, although I can***

understand that people do it because they may be too poor to bear the child. If you don't want to get pregnant, use contraceptive. I know of a case of 15 years old girl who was raped and she got pregnant, but she was encouraged to continue her pregnancy because abortion is considered a life-taking offense (murder) by law”.

Half the respondents were aware of the concept of sexual and reproductive rights and almost all were of the opinion that the foetus has rights too. About one fourth, however, felt that the rights of the foetus were relevant only after it becomes viable. The respondents also mentioned that abortion was both a social justice issue and a public health issues. To quote a judge, **“Yes, abortion is social justice issue and public health issue. Puskesmas (public health center) should be provide safe abortion services because these are affordable for the poor and are economically more efficient ways of providing services”**

Expanding access

Except one respondent who did not answer the question and another three who did not agree to increase safe abortion services the others felt that safe abortion services need to be expanded and made more accessible. Providing abortion services free of charge as a means to increase accessibility was agreed upon by 17 respondents while five said it could be 'conditionally' free to prevent misuse. Two of them said that it was necessary to implement the services properly and maintain the “standards” (QoC). The justifications given for this expansion were quite diverse. They said it was necessary because women do need safety in abortion, women's health & her life have become important because of campaigns by 'Pro-abortion' activists, to reduce maternal mortality, as a woman's right, medical & psychological reasons reduce risk to women, to minimize unsafe abortions and for population control. All respondents except 2 said that NGOs, professional bodies and the government had a very important role in promoting safe abortion services.

One lawyer while fully in support of expansion of abortion services was skeptical about the move. He said, **“That would**

be very ideal. What a dream. For the efforts to make it legal are already confronted with such a massive wall! The idea of legalizing abortion is still opposed by many. Safe abortion should be legalized first since the impact would save the mothers' lives. The government also has the obligation to provide appropriate education to prevent unsafe abortions.”

Discussion

Though illegal, a judicial interpretation in 1970s had permitted medical professionals to conduct abortions in case of exceptional circumstances. This was followed by drafting of a more liberal abortion bill and renewed efforts by a group of NGOs to amend the laws. However, in Indonesia, religion helps shape public opinion on issues such as abortion. Catholics, Muslims, Protestants, Buddhists and Hindus in the country have together protested liberalization of Indonesia's abortion laws. Islamic and military factions, in particular, went a step further and prohibited the lawmakers from using the word abortion. The word *aborsi*, used in the Department of Health's draft was deleted from the 1992 Health Law and was replaced by 'certain medical procedures'.

This ambiguity in the new Health Law of 1992 that does not refer to abortion but mentions prohibition of certain medical procedures has left the doctors confused. Women activists argue that article 15.1 law states that in the event of an emergency, 'certain medical measures' may be performed to save the mother and/or baby, but it does not say what these procedures could be, **and in other article the law says that any form of abortion is forbidden.** Further, the law states that only certified medical practitioners would be allowed to carry out abortions but does not explicitly mention what type of medical professionals will be certified. Critics of the new law question the motive behind this lack of clarity. They wonder whether the purpose is to regulate abortion rather than prevent widespread unsafe abortion.

Interestingly, women and providers have found ways to overcome the religious opposition and illegality deemed on abortions under the Criminal Code. The government

policies and programmes themselves offer opportunities to circumvent these obstacles. Though induced abortion is illegal, menstrual regulation by qualified practitioners is permitted in Indonesia since 1973. The family planning program in the country has made a technical distinction between inducing a delayed menstrual cycle and performing an abortion. Despite the evidence that most cases of menstrual regulation are pregnant, both the woman and the doctor take shelter behind the fact that there is no positive pregnancy test to confirm pregnancy. They prefer to assume that they are simply regulating the menstrual cycle and therefore the Criminal Code provisions are irrelevant in such circumstances.

Not all religious leaders are opposed to abortion either. In a recent survey of 105 religious leaders, majority (82%) agreed that abortion was justifiable if the mother's life was at stake as she is needed to look after the children and family she already has. There were some variations in the gestation till which they perceived it as acceptable. Followers of Imam Hanafi considered abortion acceptable for up to 120 days after conception, while followers of Syafi'i believed that abortion must only take place within 40 days of conception.

Implementation of the existing abortion law in Indonesia has been weak. It has seldom been applied, even though a large number of abortions are carried out by the traditional healers (dukun). Rather, the law has been applied selectively only when a woman dies during or after the procedure. This reflects not only the poor law enforcement system but also suggests the lack of awareness about the law and its enforcement mechanisms amongst the stakeholders.

In this study, most lawyers while aware of the abortion issue and its legality aspect, were not familiar with the details of the law and its implementation mechanisms. Abortion laws were not a part of their curriculum and they had few formal sources of credible information. They believed that given the illegality under the Criminal code, the implementation responsibility rested with the police. Since most did not have any experience of dealing with such cases, they did not have any knowledge of trends in judgements and legal outcomes. However, two thirds believed that the woman needed to be charged and the remaining felt that the service providers also needed to be brought to book. Some opined that the penalties and outcomes were impacted by the socio-economic status and religion of those involved. The rich usually managed to subvert the law, according to them.

The lack of knowledge was more than made up by the attitude towards abortion. Most respondents believed that abortion is a woman's rights issue and many also believed that it was a foetal rights issue in case of a viable foetus. Respondents supported expansion of services and quality of care in this context but re-iterated that such moves had to take into account the public and religious leaders' opinion. This is where they saw the role of NGOs, professional bodies and government - pushing the agenda of women's health and rights.

Acknowledgments

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