

## RINGKASAN

**ABDILA FONNA**      **Disparitas Pidana dalam Tindak Pidana Aborsi:**  
**247410101008**      **Problematika Penerapan Asas *Lex Specialis Derogat Legi***  
                                 ***Generali* pada Putusan Pengadilan di Indonesia**  
                                 **(Dr. Joelman Suhaidi, S. H., M. H., dan Dr. Mukhlis, S. H.,**  
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Pengaturan tentang tindak pidana aborsi di Indonesia diatur dalam beberapa regulasi. Diantaranya, yaitu Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP), Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan (UU Kesehatan), Undang-Undang Republik Indonesia Nomor 35 tahun 2014 Tentang Perubahan Atas Undang-Undang Republik Indonesia Nomor 23 tahun 2002 Tentang Perlindungan Anak (UU Perlindungan Anak), dan Peraturan Pemerintah Nomor 28 Tahun 2024 tentang Peraturan Pelaksana UU Kesehatan. Rezim regulasi tentang aborsi yang dinilai banyak ini, mengakibatkan proses pidana aborsi berbeda-beda. Hal ini mengakibatkan terjadinya disparitas pidana dalam tindak pidana aborsi yang dapat dilihat dari beberapa putusan pengadilan berikut, yaitu Putusan Pengadilan Nomor: 106/Pid.Sus/2023/PN Tte, 37/Pid.Sus/2023/PN Kot, dan 110/Pid.Sus/2023/PN Gst.

Tujuan penelitian ini untuk menganalisis dan menjelaskan pengaturan tindak pidana aborsi dalam sistem perundang-undangan di Indonesia dan problematika penerapan asas *lex specialis derogat legi generali* didalamnya, dan penyebab terjadi disparitas pidana dalam perkara tindak pidana aborsi pada beberapa putusan pengadilan di Indonesia.

Penelitian ini menggunakan metode yuridis normatif, dengan pendekatan undang-undang (*statute approach*), konseptual (*conseptual approach*), dan kasus (*case approaceh*). Sumber data penelitian ini didapatkan dari kajian kepustakaan terhadap data sekunder yang terdiri dari bahan hukum primer, sekunder, tersier.

Hasil penelitian menunjukkan bahwa pengaturan tindak pidana aborsi di Indonesia bersifat multi-regulasi. Kondisi ini merupakan manifestasi dari kegagalan pada komponen substansi hukum (*legal substance*). Penerapan *asas lex specialis derogat legi generali* dalam pengaturan tindak pidana aborsi di Indonesia menghadapi problematika serius karena tidak adanya panduan normatif yang jelas tentang bagaimana asas ini harus diterapkan secara konkret. Penyebab terjadinya disparitas pidana dalam perkara tindak pidana aborsi di Indonesia, yaitu perbedaan pilihan dasar hukum, perbedaan penafsiran unsur tindak pidana, perbedaan pertimbangan keadaan yang memberatkan dan meringankan, dan, perbedaan pola penalaran hukum oleh hakim.

Disarankan kepada pemerintah untuk menghendaki upaya reformasi regulasi yang sistematis dan komprehensif, yang mencakup sinkronisasi vertikal antara PP 28/2024 dengan UU Kesehatan, sinkronisasi horizontal antara KUHP Baru, UU Kesehatan, dan UU Perlindungan Anak. Lembaga yudikatif diharapkan membentuk yurisprudensi yang konsisten melalui putusan-putusan Mahkamah Agung yang memberikan panduan

normatif yang jelas tentang penerapan asas *lex specialis* dalam konteks tindak pidana aborsi.

**Kata Kunci:** Disparitas Pidana, Tindak Pidana Aborsi, *lex specialis derogat legi generali*.

## SUMMARY

**ABDILA FONNA 247410101008** *Sentencing Disparities in Abortion Crimes: The Problematics of Applying the Principle of Lex Specialis Derogat Legi Generali in Indonesian Court Decisions*  
(Dr. Joelman Suhaidi, S. H., M. H., dan Dr. Mukhlis, S. H., M. H.)

*The regulation of abortion as a criminal offense in Indonesia is governed by several legislative instruments, namely Law Number 1 of 2023 concerning the Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP), Law Number 17 of 2023 concerning Health (the Health Law), Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection (the Child Protection Law), and Government Regulation Number 28 of 2024 concerning the Implementing Regulations of the Health Law. The multiplicity of regulatory regimes governing abortion has resulted in divergent criminal prosecution processes for abortion offenses. This has given rise to sentencing disparity in abortion-related criminal cases, as evidenced by the following court decisions: Court Decision Number 106/Pid.Sus/2023/PN Tte, Decision Number 37/Pid.Sus/2023/PN Kot, and Decision Number 110/Pid.Sus/2023/PN Gst.*

*This study aims to analyze and examine the regulation of abortion as a criminal offense within Indonesia's legislative framework, the problematic application of the lex specialis derogat legi generali principle therein, and the causes of sentencing disparity in abortion criminal cases as reflected in several court decisions in Indonesia.*

*This research employs a normative juridical method, utilizing a statute approach, a conceptual approach, and a case approach. The data sources were obtained through a library research of secondary data comprising primary, secondary, and tertiary legal materials.*

*The findings of this study indicate that the regulation of abortion as a criminal offense in Indonesia is characterized by a multi-regulatory framework. This condition constitutes a manifestation of a failure in the legal substance component of the law. The application of the lex specialis derogat legi generali principle to the regulation of abortion offenses in Indonesia faces serious challenges due to the absence of clear normative guidance as to how the principle is to be concretely applied. The causes of sentencing disparity in abortion criminal cases in Indonesia include: differences in the selection of the applicable legal basis; divergence in the interpretation of the constituent elements of the criminal offense; differences in the weighing of aggravating and mitigating circumstances; and differences in the patterns of legal reasoning employed by the presiding judges.*

*It is recommended that the Government pursue a systematic and comprehensive regulatory reform, encompassing vertical synchronization between Government Regulation 28/2024 and the Health Law, as well as horizontal synchronization among the New Criminal Code, the Health Law, and the Child Protection Law. The judiciary is*

*further expected to develop consistent jurisprudence through Supreme Court decisions that provide clear normative guidance on the application of the lex specialis principle in the context of abortion offenses.*

***Keyword: Sentencing Disparity, Abortion Offense, lex specialis derogat legi generali***