



# The misuse of traditional medicine which results in miscarriage

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## Abstract

Herbal medicine is a traditional Indonesian medicine that has beneficial properties for many people. However, as seen on other kinds of medicine, its misuse will have a detrimental effect on its users. The usage of herbal medicine on pregnant women may cause pregnancy disorders, miscarriages, and even mortality. This research aims to study the misuse of traditional medicines that may cause miscarriages in pregnant women. Normative research method was applied, referring to authoritative primary legal materials. The results showed that drug abuse has become a way of consumption that are not suitable for the consumers, and is proven to have no benefit, especially herbal or traditional medicine that is consumed by pregnant women. On the other hand, the perpetrators of abuse must be held accountable for their actions based on the Criminal Code, Law No. 36 of 2009 concerning Health and Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection because it has fulfilled the elements of criminal acts. Thus, it can be concluded that the use of herbal medicine or traditional medicine can be an unlawful act if used to abort an infant, because this is capable of causing mortality and excessive side effects, especially for pregnant women.

**Keywords:** herbal medicine, abuse, traditional medicine, miscarriage

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## INTRODUCTION

Traditional medicine is medicine that is processed through specific methods by using simple tools based on the prescription of ancestors with traditional herbal knowledge that is known to be beneficial to the health. Traditional medicine is also known as an alternative or herbal treatment by combining the extract of plants, animals, therapies and various other methods. Meanwhile, according to Notoatmodjo **Invalid source specified.** traditional medicine can be interpreted as objects or ingredients that are used to treat sufferers in various ways, such as using capsuled formulated powder made of herbs, which is commonly referred to as herbal medicine. There is also a physical therapy where the healing is done through reflexology, and can also include meditation or spiritual healing.

Article 1 number 9 of Law No. 36 of 2009 on Health stated that traditional medicine is included in the category of medicines which ingredients are made from plants, animals, minerals, galenic formulation, or mixtures of various herbal ingredients which are served from generation to generation. Traditional medicine itself is known to be very good for health if it is consumed in accordance with the needs and the right function. However, an abuse on traditional medicine itself can cause considerable side effects for the health. The risk

soars higher for traditional medicines that have been reprocessed with a mixture of other ingredients, which can even cause mortality. This is due to the ingredients that are mixed into the medicines has not been laboratory tested.

On the other hand, the use of traditional medicine will look useful if used in the accurately in terms of ingredients, dosage, time of use, method of use, and accuracy of understanding. One of the things that later became a concern was the usage accuracy of traditional medicine to the users. Traditional medicine will be of different use if consumed by women who are pregnant. This is due to the dose or ingredients that may not be in accordance with the needs of the mother and the fetus in the womb. This is what triggers the risk of miscarriage and even fetal death.

Abortion (Latin: *abortus*) is the cessation of pregnancy before the gestational age reaches twenty (20) weeks, resulting in fetal death **Invalid source specified.** If the fetus is born alive after twenty (20) weeks but have not reached thirty-eight (38), then the term is premature birth. In other words, the misuse leads

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to abortion, which is an attempt to abort or kill the fetus intentionally.

In its existence, there is also what is referred to as an unwanted pregnancy, which is one of the supporting factors of abortion. Unwanted pregnancies can occur due to various causes; the most common case encountered is pregnancy outside marriage due to promiscuity. However, referring to a study conducted by the Indonesian Family Planning Association in twelve cities from 2000-2011, which was submitted via the Detik website **Invalid source specified.**, 73% to 83% of women who want an abortion are those who have married because of contraceptive failure. Interestingly, abortion in adolescents does not even reach 20 percent.

Referring to the previous narrative, it is known that the attempt of abortion that is carried out, especially in adolescents, tends to use certain tools or drugs **Invalid source specified.** The practice of abortion is seen to be common even though it exposes pregnant women to a fatal risk, especially if it is done not in accordance with the standards of the medical profession **Invalid source specified.** Abortion in Indonesia is considered as an illegal activity because it is not in accordance with health standards in Indonesia and has a considerable risk. For example, cases of abortions tend to be carried out by adolescents using drugs, especially traditional medicines, which are stated in decree No. 72 / Pid.Sus.Anak/2016/PN.Sby a child aged 16 (sixteen) years of age had an abortion using traditional medicine mixed with salt and vinegar, helped with a massage which assists the abortion process. This condition is what triggers researchers to make an in-depth study on the misuse of traditional medicines which can lead to miscarriages as part of criminal acts and describe the forms of accountability of perpetrators of traditional drug abuse that result in miscarriages in accordance with applicable laws and regulations.

## METHOD

This research is a legal or normative research that refers to authoritative primary legal materials **Invalid source specified.** Thus the study refers to the law-written in Indonesia. Meanwhile, the research applied legislative, conceptual, and case approach.

The laws and regulations used are the Health Act and regulations relating to traditional medicine. The conceptual approach is more directed at the views and doctrines that develop in the science of law. On the other hand, the *case approach* was chosen because it was able to refer to the issue that became the court's decision by having permanent power. The case that is the focus of this research is the case in District Court Decision Number: 72/Pid.Sus.Anak/2016/PN.Sby. Through this, the sources of legal materials used are primary and secondary, in which the analysis of legal materials obtained by emphasizing the normative review

of the research object under study and also existing regulations.

## RESULTS AND DISCUSSION

### Traditional Medicines Misuse that Results in Miscarriage as a Criminal Act

Abuse, according to the Big Indonesian Dictionary (Kamus Besar Bahasa Indonesia, KBBI), is a process, a way, certain actions that abuse or misuse an object, causing it to produce actions or consequences that are contrary to the will of a proper value. On the other hand, according to Hartadi and Liman, **Invalid source specified.** Misuse of drugs is an improper use of medicine that is not aimed for medical or therapeutic purposes. In other words, the use of the resulting drug is not in accordance with the purpose of the drug itself.

Meanwhile, according to *World Health Organization* (WHO) *drug abuse* is the usage of drugs or chemicals that are not intended for treatment or medication, but the drugs are used for other purposes, namely to get pleasure **Invalid source specified.** The use of drugs that are not in accordance with the dose is said to be an abuse of drugs. Drug abuse can cause disruption in work, study and in everyday life.

Furthermore, the definition of traditional medicine itself has been regulated in the provisions of Article 1 number 9 of Law Number 36 of 2009 concerning Health, namely medicine made from plant, animal, mineral, galenic formulation, or mixtures of ingredients that has been used for generations for treatment, and can be applied in accordance with the norms prevailing in society. In his book, Triwibisono **Invalid source specified.** classifies traditional medicine into three types namely, *first*, herbal medicine which is a traditional medicine from plants, animals and minerals or a mixture of these materials that have not been frozen and used for treatment based on experience. *Second* Natural extracts, namely traditional medicine extracted by screening natural materials in the form of medicinal plants, animals, and minerals by the process and require expertise and technology in its manufacture coupled with scientific evidence. *Third* phytopharmaca, traditional medicine which safety and efficacy has been proven. The raw material consists of *simplicia* or galenic formulation that meets the standards and can be equated with modern medicine in general because the manufacturing process is in accordance with the standards and is supported by scientific evidence and clinical trials in humans.

Meanwhile, the grouping of traditional medicine according to *National Institute of Healthy* (NIH) is divided into five things namely, *first*, *Alternative Medical System*, a complete system that is different from conventional systems so that it can be an alternative substitute. *Second*, *Mind body intervention*, to strengthen bodily functions by utilizing the mind such as suggestion or

hypnosis. *Third, Biological-based therapy*, using natural ingredients such as herbs. *Fourth, Manipulative and Body-Based Methods*, namely stimulating the limbs to restore normal functions, such as massage, yoga, pilates, and others. *Fifth, Energy therapy*, which use energy sources to improve bodily functions, such as acupuncture **Invalid source specified.**

On the other hand, traditional healers are prohibited from giving or using modern medicines, hard drugs, narcotics, and psychotropics as well as dangerous substances. In this case, the use of traditional medicines produced by unregistered traditional industries (manufacturers) and traditional medicines whose ingredients do not meet health requirements is also prohibited. In carrying out their work, traditional healers have the rights and obligations as stipulated in Government Regulation No. 103 of 2014 concerning Traditional Health Services contained in Article 28 paragraph (1) and (2).

The emergence of Law No. 36 of 2009 concerning reproductive health certainly becomes a tangible manifestation of the country's attention to reproductive health, especially for women. This then results in high infant and maternal mortality due to childbirth. However, if explored in depth, both are the required parameters of a country's development (Bazzi, et al, 2014).

Through its development, it is known that pregnancy occurs because of intercourse, where there is a meeting between sperm cells and eggs so that the conception occurs. Infants who are old enough in the womb can be born less than 280 days or 40 weeks in the womb, calculated from the first day of the last menstruation **Invalid source specified.** The pregnancy period itself is calculated from the time of conception to the birth of the fetus. In addition to pregnancy, the community is also familiar with the term miscarriage. Some often even associate miscarriages with abortion which term is also used in the medical world. *Abortion* is the death of the fetus before 20 weeks of pregnancy which the fetus weighs under 500 grams **Invalid source specified.** The results of conceptions that are aborted from the womb is extracted prematurely. Meanwhile according to Triwibisono **Invalid source specified.** abortion means the cessation of pregnancy that occurs between the time when an egg has been implanted (*blastocytes*) until the pregnancy is 28 weeks. That way, through some previous definitions it can be seen that the concept of miscarriage is an action taken with the aim of eliminating the fetus from the womb of a woman before the end of the natural period of her pregnancy.

In its operation, the act of abortion must be performed safely, of quality, and responsibly and performed by a doctor in accordance with the standards. On the other hand, it must also be equipped with adequate health service facilities in accordance with established provisions. Not only that, the treating doctor must also receive training by an accredited training

provider. The doctor who performs the abortion should not be a doctor in the category of the abortion eligibility team member or the doctor who provides a certificate of gestational age due to rape. Before having an abortion, which has been regulated in the legislation, it is expected that the person will conduct counseling activities carried out before and after the act of abortion. This counseling aims to determine the needs of women who want to have an abortion, convey, as well as explain the stages and side effects of the abortion itself.

However, tracing further on the phenomena that occur in the community, many abortion processes are not in accordance with the provisions, namely through illegal practices or the use of traditional medicines that can abort a fetus to cause death. Abortion through herbal medicine (traditional medicine) or other drugs aims to cause excessive circulation of blood in the lower abdomen, hypermia, causing the uterus to contract or gives the effect of heartburn, and spasms **Invalid source specified.** Herbal medicine in this case is often applied with various other ingredients, such as young pineapple water, pepper with chili, and even glass powder.

One of the cases that can be found is the Cap Wayang (Cleng Marem) herbal medicine, which when consumed in pregnant women can cause the fetus to contract because the herbs cause heat in the abdomen which lead to bleeding and uterine collapse. Cap Wayang Herbal Medicine is generally used to reduce aching in rheumatic pain and facilitate menstruation cramps, and can be obtained at herbal medicine shops and Chinese drug stores easily. This product was issued by UD. Jamu Anoman Dosamuka in Kudus Regency, Central Java, which has also been registered with the Food and Drug Supervisory Agency (BPOM) with registration number TR163297471 issued on November 10, 2016. The herbal medicine is also equipped with usage methods, recommendations and prohibitions, in which pregnant women are prohibited to consume the medicine due to potential of miscarriage. Knowing the prohibition, many people then assumed that the herbal medicine could be used as an abortionist, which is an abuse of drugs, especially in traditional medicine.

On the other hand, as mentioned earlier, abortion can also be carried out by a illegal practitioner, commonly known as a shaman. This includes actions that cannot be accounted for and are not in accordance with the norms of society or the legal norms. When the abortion is accompanied by an herbal remedy with the aim of facilitating the implementation of the death of the fetus, the actions taken by the shaman include the misuse of the skills and can be categorized as a criminal offense. Abortion is a moral problem, the aspects are interconnected between decency and psychological aspect **Invalid source specified.**

Article 299 of the Criminal Code has stated that someone who deliberately treats women or orders them

to be treated, is notified or raises hope that their pregnancy can be aborted through treatment, will be sentenced to a maximum of four years and if the act is used for profit or used as the livelihoods carried out by a physician, midwife or medicine interpreter, then the criminal sentence is added by one third, and at the same time the right to the profession he is deprived of is revoked. Article 346 of the Indonesian Criminal Code has also stated that if a woman who intentionally causes her fetus to die or is pregnant or has someone else cause it to occur, will be subject to a sentence of up to four years.

### **Criminal Liability for the Misuse of Traditional Medicines**

In this study, what became the main focus was the case that occurred with number 72/Pid.Sus.Anak/2016/PN.Sby. Through the research conducted, researchers later learned that there were several things that had to be accounted for regarding the misuse of traditional medicines. This due to the use of traditional medicine that inflicts loss to others and does not comply with statutory regulations.

#### **Position Case**

On November 29, 2015, Enny Novi Nuridha with her biological son Viendy Adam Al-Kautsar (aged 16 years 9 months) and Frisca Destyana Putri (aged 16 years 6 months), who was her lover came to Adimah's house on Jl. Tenggumung Wetan Gang Randu No. 25, Surabaya. They aimed to ask for help in aborting Frisca's pregnancy. Adimah checked the Frisca's pregnancy and according to him the Frisca was 5 (five) months old pregnant. Adimah herself claimed she did not want to help because her own pregnancy was already quite old. After conducting a series of negotiations, Adimah finally gave 5 (five) packages of herbal medicine for late menstruation which was drunk 3 (three) times a day with warm water mixed with salt and vinegar. The medicine costed Rp. 150,000 Then dated December 7, 2015 Adimah performed a massage on the back of the waist and left abdomen followed by examining the genitals of Frisca who apparently had entered the opening 2 (two).

It is known that on 8 December 2015 a series of abortion processions was carried out which later led to the death of the baby at the age of five (5) months. Costs incurred were also not small, even at the end of the process Adimah (as the shaman) was given a vehicle registration guarantee by his customer, in this case Enny.

#### **Legal Considerations**

Considering that through the actions that have been carried out, the public prosecutor charged the defendant with an alternative form of indictment with four indictments. *First*, indictments that violate Article 80 paragraph (3) of RI Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. *Second*, indictments that violate Article 77 A

paragraph (1) of RI Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code. *Third*, indictment for violation of Article 342 of the Criminal Code. *Fourth*, indictment related to violation of Article 346 of the Criminal Code. In this case the panel of judges may choose the most appropriate indictment based on the facts revealed in the trial, and the panel of judges determine the second or second indictment namely violating Article 77 A paragraph (1) of RI Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code.

Based on the problems and actions, it can be seen that the subject of this crime is a woman who is pregnant, in which the fetus inside the womb was still alive because it is included in the chapter on the crime towards life **Invalid source specified..** Women in Article 346 of the Criminal Code become the sole perpetrators or provocateur, which can also be the persuaded or participant. Sole perpetrator is a criminal offense who commits an act both using and without tools to meet the elements in the criminal offense Article 346 of the Criminal Code. In that article, it is also stated that the "order for someone else to do it", can also mean that the woman is the messenger, the activator.

It is a crime to abort or abort the womb because the act leads to the taking of one's life and one's lack of responsibility of one's action. In terms of abortion, the law does not consider the reason behind the mother's action. It is known that Frisca herself was also subject to Article 55 paragraph (1) of the Criminal Code concerning inclusion included in the classification ordering *doen plegen*, because she was the person who ordered Enny Novi Nuridha to ask for help so that the abortion was carried out by finding a shaman. The help of the shaman was also present as an intermediary in helping fulfill the wishes *doen plegen* and the shaman was used as a tool. Thus it is known that criminal liability for the use of traditional medicines and its practices is not only about one perpetrator, but also brings along other people who are the drivers or supporters of the implementation of abortion activities.

### **CONCLUSION**

Through the research conducted, it can be concluded that, drug abuse, which in this case is herbal medicine that is capable of causing adverse effects despite of its benefit, is against the law. That way, the related party must be accountable for its actions based on the Criminal Code, Law No. 36 of 2009 concerning Health and Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection because it has fulfilled the elements of criminal acts.

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