

Legal Measures to Waive Abortions in ASEAN Countries

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Abstract

The purpose of this research was to study abortion justifications in South East Asian region in comparison with globally legal abortion standards, and to use this knowledge obtained to improve Thailand's abortion-related laws owing to the fact that Thai government is planning to promote the country as South East Asian's medical hub. Methodology employed was documentary research in nature. Data sources were a wide variety of academic writings, well-accepted research, widely proved documents and related websites. Data collected were the statues of laws and any related rules in each country which are primary information. The analysis was done by comparing the collected data. The results of the study revealed that, at present, restrictions of abortion in force do not support human's freedom/liberty and are a major factor contributing to illegal abortions that may threaten or harm a pregnant woman's health and life. As a consequence, in some countries, legal abortion has become more common. In Thailand, legal abortion can be performed only if a pregnant woman is sexually abused or has abnormal pregnancy and is medically proved. Among South East Asian countries, abortion laws can be divided into two groups. Group 1 comprises Laos, Indonesia, The Philippines, Brunei, Myanmar and Malaysia. All of countries in this group have less freedom/liberty to abortion than Thailand, while Group 2, Cambodia, Singapore and Vietnam, has more freedom/liberty to abortion than Thailand.

Keywords: Abortion laws, except of liability, ASEAN regional countries

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Introduction

At the beginning of Year 2016, it was time to launch ASEAN Economic Community (AEC) region, which coordinates the economic and social cooperations among Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Vietnam and Thailand for the peaceful livelihood growth of States in the region in spite of autonomous sovereignty over each State's territory that joined together to establish ASEAN Free Trade Area (AFTA). However, in order that such AFTA joining which aims to retain each State's public interests can be actually put into practice, all the member countries' policies and legal measures should be consistent in the same direction and with those of civilized countries.

ASEAN countries have very high abortion statistics in each year; the total is approximately two million abortions. For example, Vietnam approximately has up to 300,000 or more¹, or Thailand is estimated to have a close abortion statistics to those of Vietnam. Yet, actual abortion statistics cannot be collected owing to the fact that such collection shall be against Regulation on Medical Ethics in the case of legal abortions, and such collection cannot be done with any States' illegal act or abortion. Associate Professor Kotom Areeya estimated that illegal abortions are approximately ten times higher in numbers than legal ones². There was an estimate that Southeast Asian countries had 36 abortions per 1,000 pregnancies, and approximately 40% of abortions occurred were performed unsafely³. Most of the abortions are illegal, which causes damages to most pregnant women's bodies and lives as a result of the fact that abortion performers usually are no medical professionals and the abortions are not performed in hospitals. Professor Suwachai Intaraprasert (MD), the President of the Royal Thai College of Obstetricians and Gynaecologists, assessed that there would be approximately between three and five deaths of women per 1,000 illegal abortions⁴.

In the last century, various countries in the world started legislation that brought charges against abortions. Initially, the charges were strictly pressed against criminals without any legal justification stated. Later, controversy arose between two big groups. One group called "Pro Life" thought that the right to fetus's life is more important, so they did not advocate abortions. The other called "Pro Choice" gave importance to women's right to autonomy for self-determination, so they advocated freedom to abortions with conditions. The latter's concept that derived from the growth of the right, liberty and equality, especially gender equality, made each country start having a guideline to amend laws in the direction of giving more liberty and right to women by provides legal justification. At present, according to United Nations (UN)'s report, legal grounds for abortions in various countries are as follows⁵: (1) to save a pregnant woman's life, (2) to preserve a pregnant woman's physical health, (3) to preserve a woman's mental

¹ From *Vietnam teenage girls have unwanted pregnancy: the highest abortion tops rates in Asean*, by Uasean, 2012, Retrieved from <http://www.uasean.com/kerobow460/01>

² From *Abortion: the choice should be relaxe*, by Kotom Areeya, n.d., Retrieved from <http://www.arya.in.th/th/article1.html>

³ From *Facts on abortion and unintended pregnancy in Asia*. (p. 1), by Guttmacher Institute, 2009, Retrieved from <http://www.womenhealth.or.th/downloads/document-resource/eng-.10pdf>

⁴ From *The danger of unsafe abortion*, by Suwachai Intaraprasert, 2009, Retrieved from http://www.tmc.or.th/detail_news.php?news_id=410&id=1&s_head=7

⁵ From *United Nations world abortion policies 2013*, by United Nations, 2013, Retrieved from <http://www.un.org/en/development/desa/population/publications/policy/world-abortion-policies-2013.html>

health, (4) pregnancy due to criminal rape or incest, (5) fetal impairment, (6) other economic or social reasons, and (7) on a pregnant woman's request.

According to the same UN's report, at present, every SEA country has its own provision that prescribes abortion offences and exempts medical practitioners from any abortion offence, but the provision of each country is different in details and can be divided into four big groups by arranging in order of the openness of legal measures for abortions in that State.

Country Group 1 allows a pregnant woman to have an abortion with intent. SEA countries that use this principle include Vietnam, Cambodia and Singapore.

Country Group 2 allows a pregnant woman to have an abortion because of physical and mental health of that woman. SEA countries that use this principle include Thailand and Malaysia.

Country Group 3 allows a pregnant woman to have an abortion due to possible harm to mother's life. SEA countries that use this principle include Laos, Indonesia, Philippines, Brunei and Myanmar.

It can be seen that legal measures on justification for abortions of SEA countries are not consistent in the same direction. Therefore, this topic is worth studying with the aim to understand legal measures of such matters of SEA countries and universal principles of legal measures on justification for abortions of civilized countries; to study the knowledge regarding justification for abortions of SEA countries in comparison with universal measures for abortions according to civilized countries' laws; to use as a guideline to amend laws of Thailand to make them more modern; to support Thai government's policies with respect to medical hub of Asia further

Conclusion

Approximately 200 years ago, several States started passing the bills on abortion ban for enforcement in their own countries in order to preserve fetus that might have been born and survived to be human in accordance with laws. This indicated the concept that protected more human dignity because laws on abortion ban are deemed the protection of human dignity since fetus, not just the protection of infant. However, since Post World War II, the concept of human right protection has started prospering more. The concept focusing on the protection of a mother's liberty and right not to be in unwanted pregnancy has replaced the concept of the protection of the right of fetus which is regarded as the rather vague right because there has been no real right holder of fetus in legal systems. Moreover, the nature of abortion offence considered as a victimless crime as well as the risk of being arrested if having an abortion against laws has little weight if compared to the burden of raising an infant stemmed from unwanted pregnancy. Legislation to punish women who have abortions without justification is viewed as pushing women with unwanted pregnancy into having to use illegal abortion service that is risky with respect to the absence of proper medical practice standard. This will have negative effects on women's life welfare and physique.

As a consequence, at present, each country, especially developed countries, amends legal measures on justification for abortions or on legal grounds for abortions in the

direction that gives more pregnant women's liberty to abortions. According to UN's report, legal grounds for abortions in various countries that are arranged in order of the-lowest-to-the-highest protective grounds for women's liberty are as follows: (1) to save a pregnant woman's life, (2) to preserve a pregnant woman's physical health, (3) to preserve a woman's mental health, (4) pregnancy due to criminal rape or incest, (5) fetal impairment, (6) other economic or social reasons, and (7) on a pregnant woman's request.

In civilized countries, such justified abortions will have to be performed only by a doctor and in a licensed clinic. A pregnant woman who wants to have an abortion is required to pass the step of receiving counseling from social work agents and doctors before proceeding. Most countries will determine that abortions due to economic and social reasons and on a pregnant woman's request can be performed up to 16 weeks gestation. If a pregnant woman wants to terminate pregnancy after 16 weeks gestation, her reason must fall into one of the following" saving a pregnant woman's life, preserving a pregnant woman's physical health, preserving a woman's mental health, or pregnancy due to criminal rape or incest as prescribed by each State's laws.

Thailand has the presence of justified abortions in Section 305 (1) and (2) of the Criminal Code of Thailand, which were provided to protect any act of a doctor in case "it is necessary for the sake of the woman's health, or" and "the pregnant woman on account of the criminal offences...". Later, the Medical Council of Thailand's Regulation on Criteria for Performing Therapeutic Termination of Pregnancy in Accordance with Section 305 of the Criminal Code of Thailand B.E. 2548 was established. Such regulation lays down details of medical profession practice in accordance with Section 305 that necessity to perform an abortion due to a woman's health includes physical and mental health. Harm to mental health also includes severe stress due to the finding that the fetus may have severe disability. Abortions due to mental health reason must be approved by two medical practitioners as well. Besides, the Council lays down the principle that, for abortions owing to reasons under Section 305 (2), there must be evidence or fact leading to a reasonable belief that the pregnancy is actually caused by a criminal offence. It is specified that the qualification of a doctor who perform an abortion must be a medical practitioner. It is not particularly specified that an abortion performer must be a specialist obstetrician. For premises for performing an abortion, hospitals or medical infirmaries that can provide overnight admission to patients are able to perform an abortion of every gestation. For medical clinics, an abortion can be performed only for gestation up to 12 weeks, and each abortion performed must be reported to the Medical Council of Thailand. In addition, physical and mental health symptoms of that woman will be kept in the patient medical record as well.

It may be concluded that abortions can be legally performed in Thailand due to the following grounds: to save a pregnant woman's life, to preserve a pregnant woman's physical and mental health, pregnancy due to criminal offence, or fetal impairment. When compared to AEC countries' legal measures, AEC countries can be divided into two groups. Country Group 1 has legal measures that give less liberty to women to perform an abortion than Thailand, and Country Group 2 has legal measures that give more liberty to women to perform an abortion than Thailand as follows:

Country Group 1

Countries with legal measures regarding abortions that give less liberty to women to perform an abortion than Thailand:

1) Lao People's Democratic Republic prescribes only one abortion justification for the sake of saving a mother's life. Such justification is in accordance with the principle of "committing any offence on account of necessity" according to the Criminal Code and must only be pre-approved by the Ministry of Health.

2) Republic of Indonesia prescribes only one abortion justification for the sake of saving a mother's life. The abortion must be consented by a panel of experts and a pregnant woman's family.

3) Republic of the Philippines prescribes only one abortion justification for the sake of saving a mother's life. Such justification is in accordance with the principle of "committing any offence on account of necessity" according to the Criminal Code and must only be pre-approved by a panel of experts.

4) Brunei Darussalam and Republic of the Union of Myanmar both prescribe an identical principle: prescribe only one abortion justification for the sake of saving a mother's life. Such justification is in accordance with the principle of "committing any offence on account of necessity" according to the Criminal Code and needs no pre-approval from any organization or any panel.

5) Federation of Malaysia prescribes abortion justifications for the sake of preventing harm to a mother's life, body or mind. An abortion that will fall into such justifications must be performed up to 12 weeks gestation, must have two doctors with medical degrees who give opinions supporting the abortion that terminating pregnancy will help prevent harm from a pregnant woman's life, body and mind more than keeping pregnancy going.

Country Group 2

Countries with legal measures that give more liberty to women to perform an abortion than Thailand:

1) Kingdom of Cambodia prescribes that a pregnant woman can have an abortion on request if the gestation does not exceed 120 days. In case the gestation is more than 120 days, the abortion relies on the following grounds: harm to life, harm to a mother's body, necessity due to an infant's disability or pregnancy due to rape. Two out of three doctors must also approve of the abortion if the gestation is over 120 days.

2) Republic of Singapore prescribes that a pregnant woman can have an abortion on request with the gestation not exceeding 16 weeks. But, if the gestation is between 16 and 24 weeks, only an approval letter issued by a doctor who works in licensed medical infirmaries is enough to make a pregnant woman be able to have an abortion. Singapore is deemed the only country in the world that prescribes that 24 weeks gestation is eligible for an elective abortion. But, if the gestation is after 24 weeks, an abortion must be

performed for the sake of saving a woman's life or preventing harm from a woman's body and mind only. Although Singapore prescribes legal grounds for abortion by taking into account a woman's liberty to make decision quite significantly, the right to abortion is reserved exclusively for Singaporean citizens or people who have a work permit in Singapore.

3) Vietnam is deemed the country that gives the most liberty to a woman to have an abortion in ASEAN owing to the absence of criminal laws bringing charges against a woman who perform self-induced abortion. However, such Vietnam's legal policy cannot make any abortion fall under control of the State at all, eventually having an effect on the protection of life and physical health of a woman who has an abortion.

Recommendation

Thai laws should be amended to make them more modern and consistent with civilized countries' international standards in order for supporting the government's policy regarding the medical hub of Asia. Therefore, appropriate amendment of Thai laws should be done as follows:

1) Add the provision of Section 305 providing that a doctor can perform pregnancy termination on a woman's request up to 16 weeks gestation. Yet, a pregnant woman must receive counseling from a social worker and a doctor and, after receiving counseling, has at least 24 hours for making decision.

2) Add the provision of Section 305 providing that an abortion after 16 weeks gestation will have to be present with necessary grounds due to a woman's or a mother's physical and mental health; the findings that fetus has severe disability or has a high risk of fetus having severe disability; or has a severe genetic disease or has a high risk of having severe genetic disease. This addition will be consistent with the Medical Council of Thailand's Regulation on Criteria for Performing Therapeutic Termination of Pregnancy in Accordance with Section 305 of the Criminal Code of Thailand B.E. 2548, which is in force already. Add a legal ground for abortion with respect to pregnancy due to incest which has a high risk of a new-born infant having impairment and deformation, which is also consistent with international codes of practices.

3) Section 305 provides that an abortion is solely at the discretion of the doctor to judge. It should provide that every case of abortion must be approved by two doctors or medical practitioners.

References

- Areeya, K. (n.d.). *Abortion: the choice should be relaxed*. Retrieved from <http://www.arya.in.th/th/article1.html>
- Chetsumon, C. (2014). *ASEAN community: Impact of Thai law*. Bangkok: winyuchon.
- Gutmacher Institute. (2009). *Facts on abortion and unintended pregnancy in Asia*. Retrieved from <http://www.womenhealth.or.th/downloads/document-resource/eng-10pdf>
- Intaraprasert, S. (2009). *The danger of unsafe abortion*. Retrieved from http://www.tmc.or.th/detail_news.php?news_id=410&id=1&s_head=7
- International Law Project (ILP). (n.d.). *Lao: Criminal procedure law*. Retrieved from http://www.ilp.gov.la/Lao_Law_Eng.asp
- Kadish, S. H., & Schulthofer, S. J. (1989). *Criminal law and it's processes: Cases and materials*. London: Little Brown and co.
- Khongkaew, J. (2012). *Victimless crime: Study on offence of abortion* (Master's thesis, Thammasat University, Bangkok). Retrieved from <http://digi.library.tu.ac.th/thesis/la/1837/title-biography.pdf>
- Lanngnak, S. (2009). *Unborn child: right and protection* (Master's thesis, Thammasat University, Bangkok). Retrieved from <http://digi.library.tu.ac.th/thesis/la/1480/title-biography.pdf>
- Loetthamthewi, P., & Laowansiri, A. (2014). *ASEAN Economic Community and Thai Legal System*. Bangkok: winyuchon.
- Myanmar Library. (n.d.). *Myanmar the panal code*. Retrieved from http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf
- Meenakanit, T. (2009). *Principle of law. Criminal law: the general part*. Bangkok: winyuchon.
- Saengkanokkul, p. (2005). *30 years ago: the liberalization of abortion laws in France*. Retrieved from <http://www.pub-law.net/publaw/view.aspx?id=674>.
- Singapore Statutes Online. (n.d.). *Criminal procedure code*. Retrieved from <http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=675a5b4410967125b.535doc>.
- Singapore Statutes Online. (n.d.). *Termination of pregnancy act*. Retrieved from <http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A12e6e975-dbc5-4964-9128-4d2f4ca6d89c%20Depth%3A0%20Status%3Ainforce;rec=0>

SK & P Cambodia Law Firm. (n.d.). *Law on abortion*. Retrieved from http://www.skpcambodia.com/Laws%20&%20Regulations%20of%20the%20Kingdom%20of%20Cambodia/Health_Medicine_Disabilities/Law%20on%20Abortion%20Law_Eng.pdf
Uasean. (2012). *Vietnam teenage girls have unwanted pregnancy: the highest abortion tops rates in Asean*. Retrieved from <http://www.uasean.com/kerobow460/01>

United Nations Office on Drugs and Crime. (n.d.). *Brunei penal code 1951*. Retrieved from https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf.

United Nations Office on Drugs and Crime. (n.d.). *Indonesian penal code*. Retrieved from https://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf

United Nations Office on Drugs and Crime. (n.d.). *Laws of Brunei: Chapter 22. penal code. arrangement of chapters (Revised Edition 2001)*. Retrieved from https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf

United Nations. (2013). *United Nations world abortion policies 2013*. Retrieved from <http://www.un.org/en/development/desa/population/publications/policy/world-abortion-policies-2013.html>

United Nations. (n.d.). *An act revising the penal code and other penal laws*. Retrieved from http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf

United Nations. (n.d.). *Brunei*. Retrieved from <https://www.un.org/esa/population/publications/abortion/doc/brunei.doc>

United Nations. (n.d.). *Cambodia*. Retrieved from <http://www.un.org/esa/population/publications/abortion/doc/cambod1.doc>

United Nations. (n.d.). *Indonesia*. Retrieved from <http://www.un.org/esa/population/publications/abortion/doc/indonesia.doc>

United Nations. (n.d.). *Laos*. Retrieved from <http://www.un.org/esa/population/publications/abortion/doc/laos.doc>.

United Nations. (n.d.). *Malaysia*. Retrieved from <http://www.un.org/esa/population/publications/abortion/doc/malaysia.doc>

United Nations. (n.d.). *Myanmar*. Retrieved from <https://www.un.org/esa/population/publications/abortion/doc/myanmar.doc>

United Nations. (n.d.). *Philippines*. Retrieved from <https://www.un.org/esa/population/publications/abortion/doc/philippines.doc>

United Nations. (n.d.). *Singapore*. Retrieved from
<http://www.un.org/esa/population/publications/abortion/doc/singapore.doc>

United Nations. (n.d.). *Vietnam*. Retrieved from
<http://www.un.org/esa/population/publications/abortion/doc/vietnam.doc>