

TELEMEDICINE ABORTION DURING COVID – 19 AND THE CHALLENGES IN ITS APPLICABILITY IN MALAYSIA

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Abstract - This article investigates the loopholes in Malaysia's abortion law that make it challenging for Malaysia to implement the use of telemedicine for abortion during Covid - 19. The purpose of this paper could contribute to a reform in abortion law to ensure the legitimacy of abortion via telemedicine in an emergency situation like COVID - 19 pandemic. This article started out by analyzing Utilitarian theory and the Principle of Reproductive Autonomy. Both the theories and the principle of law arguably reflect that abortion is legitimate including during COVID-19. Following that, this article discusses the advantages of abortion via telemedicine as a whole. Further to this, the article will discuss the local literature on abortion to reflect that the law on abortion in Malaysia is ambiguous and outdated which makes it challenging to implement a new method of abortion via telemedicine. The last part is the comparative study and the author collates the challenges to enabling abortion via telemedicine in Malaysia. It is argued that, while telemedicine is a legitimate method for abortion to be used during the COVID-19 pandemic, it is difficult to implement the applicability in Malaysia due to the undeveloped and ambiguous law on abortion at the current stake. The author concluded that the current abortion law should be reformed and that much more work needs to be done before abortion via telemedicine can be reached its applicability. This article is significant because it paves the way for further research on telemedicine abortion from a Malaysian perspective.

Keywords: Abortion, Covid - 19, Utilitarian, Reproductive autonomy

INTRODUCTION- CHAPTER 1

The right to reproductive choice refers to a woman's ability to choose whether or not to reproduce and whether or not to bear or terminate an undesirable pregnancy and which type of family planning and contraception she prefers. Legal frameworks are widely recognized as critical tools for ensuring the right to reproductive health. According to the WHO, a restrictive law, insufficient service availability, excessive expense, stigma, cultural biases, religious views, and superfluous restrictions are among the barriers that prevent women from obtaining a safe abortion, resulting in unsafe abortion.

In Malaysia, the issue of safe abortion is far from settled. Access to safe abortion is often restricted because of the ambiguity of the law on abortion in the country. The abortion legislative framework is outdated, making it difficult to implement the applicability of telemedicine abortion. Malaysia suffers from a lack of clear interpretation and understanding of abortion laws and policies, resulting in poor implementation and limited safe, accessible services¹ leading to many women opting for unsafe services. The worst situation is where some women have chosen to dump their babies in trash cans, drains, and dumpsters before burning them beyond recognition out of desperation. Despite no official statistics by the Government of Malaysia for abortion rates in Malaysia, Dr. Subatra Jayaraj the president of Reproductive Rights Advocacy Alliance Malaysia estimated 100,000 abortions occur every year.² The difference is whether the procedure is safe or unsafe. Covid - 19 has made the situation even worse. Orphan Care Foundation, a Malaysian non-profit organization reported that 45 babies were rescued nationwide between March and December last year during the country's partial lockdown.³

¹ Wah-Yun Low and others, 'Access to Safe Legal Abortion in Malaysia: Women's Insights and Health Sector Response' (2015) 27 Asia Pacific Journal of Public Health 33.

² Hwei Mian Lim, 'Country Profile : On Universal Access to Sexual and Reproductive Health Malaysia' (2015).

³ Nortajuddin Athira, 'Abandoned By Family In A Pandemic' (*The ASEAN Post*, 23 February 2021)

<<https://theaseanpost.com/article/abandoned-family-pandemic>> accessed 15 March 2023.

The coronavirus pandemic has highlighted the gender, racial, and economic disparities in healthcare systems around the world that make it challenging for women to access the crucial healthcare they require including access to safe abortion. The coronavirus is pushing more women to seek illegal and unsafe abortions, as lockdowns limit access to healthcare. In Malaysia, even before the Covid - 19 pandemic, the difficulties of many Malaysian women in getting access to safe and legal abortion are not new and concerning. Protecting women's right to reproductive autonomy and providing safe, legal access to abortion during COVID-19 is the critical objective to achieve in this paper. This study will look at the legislative framework on abortion and the barriers that women face in obtaining safe abortions, as well as how these may make the application of abortion via telemedicine during COVID-19 in Malaysia challenging.

This paper consists of 7 chapters. Chapter 1 is the introduction. Chapter 2 is the methodology. Chapter 3 is about the analysis of the relationship between the Utilitarian theory, the Principle of Reproductive Autonomy, and the COVID - 19. This chapter will reflect on how this theory could be used in supporting the author's argument for enabling abortion including abortion during the emergency situation of Covid - 19. Chapter 4 of the paper will examine the advantages of abortion via telemedicine as a whole. Chapter 5 consists of the legality of abortion in Malaysia that reflect the law is outdated and a losing game for women in Malaysia. Chapter 6 of the paper is the discussion and a comparative study will be made in this part. This part will discuss the ambiguity in the legislative framework on abortion that makes it challenging to expand access to abortion via telemedicine in Malaysia. Chapter 7 is the conclusion and recommendation.

The article will lead to the conclusion that telemedicine abortion is a fairly sensible and safe method during COVID-19, however, it might be challenging in its applicability in Malaysia because of the ambiguity and unsettled current law on abortion in this country. Despite the challenges, Malaysia should start amending and reforming the law on abortion to ensure a more settled law on abortion, therefore methods like telemedicine abortion can be made applicable legally in Malaysia in the occasion that the same emergency of COVID - 19 gets worse in the near future.

CHAPTER 2 - METHODOLOGY

This article is a conceptual paper that adopts a doctrinal comparative research methodology. The purpose of this article is to investigate the loopholes in Malaysia's abortion law that make it challenging for Malaysia to implement the use of telemedicine for abortion during Covid - 19. The sources are exclusively based on reviews, analyses, and comparisons of data from previous literature and legal precedent. Several techniques were employed to gather and analyze the data from the literature. Secondary data on this subject were gathered via online databases. Journal articles, case law, statutes and Google Books are a few examples of literary sources. to search for online data, the author employed a Boolean operator in Google Scholar. Further, critical reading and rigorous comparison are used to analyze the data that have been gathered. The data from the sources and rigorous comparative study are combined to produce research findings that might help with future research and the policymakers to ensure a more advantageous legal environment for abortion in Malaysia.

CHAPTER 3 - THE RELATIONSHIP BETWEEN UTILITARIAN THEORY, THE PRINCIPLE OF REPRODUCTIVE AUTONOMY, AND THE COVID-19

The cornerstone of contemporary development theory is rights-based paradigms. The right to abortion as a human right encompasses a broad range of rights, including the right to health, life, reproductive healthcare, integrity, autonomy, and decision-making, as well as the freedom of religion and conscience, equal protection under the law, and the right to be free from cruel and degrading treatment.⁴ A human rights approach in the context of abortion must lead to legislative reform to ensure safe and equitable access.⁵ Many organizations, at least under certain circumstances consider abortion to be a human rights matter including the UN CEDAW, the Committee on the Rights of the Child, The UN Human Rights Committee, the Committee on Economic Social and Cultural Rights, and

⁴ Janet Walsh, Marianne Mollmann and Angela Heimbürger, 'Abortion and Human Rights: Examples from Latin America' (2009) 39 IDS Bulletin 28.

⁵ Joanna N Erdman, 'Harm Reduction, Human Rights, and Access to Information on Safer Abortion' (2012) 118 International Journal of Gynecology & Obstetrics 83.

the Committee against Torture. At the same time, Amnesty International has too strongly advocated for the decriminalization of abortion to ensure the decreasing number of unsafe practices worldwide.⁶

Two theories that the author will be analyzed further in this paper are Utilitarianism and Reproductive Autonomy. The first account of utilitarianism theory was first developed by Jeremy Bentham. Utilitarianism is a branch of consequentialism. Hedonistic utilitarianism is solely focused on experiencing pleasure and suffering, as we may recollect. Therefore, this theory will be interested in how much pleasure and pain there is in circumstances where abortion is allowed as opposed to how much pleasure and agony there is in circumstances where abortion is prohibited. In the essence of moral action, this theory is the one that offers maximum utility, happiness, and pleasure to most people. For example, where a pregnancy threatens the life of a mother, doctors prescribe abortion based on the utilitarian principle. This reflects saving the mother's life is more beneficial than saving the life of a fetus. Stefan regards the fetus as a potential person which only achieves the status of a human through successful birth, therefore the rights of a mother override the fetus's rights. At the societal level, significant people such as a husband, friends, doctors, and relatives have a marked influence on ethical decisions concerning abortion. Usually, fetus abnormalities, rape issues, socioeconomic conflict, and medical problems are some of the factors that influence the ethical decision of abortion. For instance, rape cases caused unwanted pregnancies, and then, if women with economic hardship that unable to care for the baby once it's born violates the will of a mother, family, and society to bear children in a planned manner. In this regard, the utilitarian theory applies considering the welfare of unwanted fetuses and society including the mother.

The word autonomy comes from the Greek *autos* (self) and *nomos* (rule, governance of law) and was first used to refer self - government or self-rule.⁷ In the word of Ronald Dworkin, 'We allow someone to choose death over radical amputation or a blood transfusion, if that is his informed wish because we are acknowledge his right to a life structured by his own values.'⁸ The principle of autonomy has been expanded to the area of human reproduction and is often termed 'procreative liberty' or 'reproductive autonomy' stipulated that reproductive autonomy should include the freedom to reproduce with the genes we chose and to which we have legitimate access or to reproduce in ways that express our reproductive choices and our vision on the sorts of people we think it right to create.⁹ Twelve Black women who were protesting at a pro-choice convention in Chicago in 1994 coined up with the term "reproductive justice" to demand that their sexual and reproductive rights be formally recognized.¹⁰ The right to reproductive choice refers to a woman's ability to choose whether or not to reproduce and whether or not to bear or terminate an undesirable pregnancy and which type of family planning and contraception she prefers. These rights are based on the recognition of all couples' and individuals' fundamental rights to choose the number, spacing, and timing of their children freely and responsibly and to have the information and means to do so, as well as the right to achieve the highest level of sexual and reproductive health. The International Conference on Population and Development's Programme of Action (ICPD) in 1994 acknowledged the importance of women's rights to sexual and reproductive health for their overall health.¹¹

How can these two theories be used to enable abortion including during the COVID - 19? As indicated above, reproductive autonomy means that every woman has the right to decide and control her body, whereas utilitarian theory prioritizes consequences that bring the greatest utility, happiness, and pleasure to the vast majority of people. The application of utilitarianism and reproductive autonomy in tandem to enable abortion during a COVID-19 emergency is logical. For instance, the pandemic Covid - 19 has turned into a global economic crisis, putting at risk of health, jobs, and

⁶ Amnesty International, 'Amnesty International's Policy on Abortion : Explanatory Note' (2020) POL 30/2847/2020.

⁷ Carlos A Rodriguez-Orsorio and Guillermo Dominguez-Cherit, 'Medical Decision Making: Paternalism versus Patient-Centered (Autonomous) Care': (2008) 14 *Current Opinion in Critical Care* 708.

⁸ Ronald Dworkin, *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (Knopf 1993).

⁹ Kristin Zeiler, 'Reproductive Autonomous Choice – A Cherished Illusion? Reproductive Autonomy Examined in the Context of Preimplantation Genetic Diagnosis' (2004) 7 *Medicine, Health Care and Philosophy* 175.

¹⁰ Zakiya Luna, "'Truly a Women of Color Organization": Negotiating Sameness and Difference in Pursuit of Intersectionality' (2016) 30 *Gender & Society* 769.

¹¹ Claudia Garcia-Moreno and Avni Amin, 'Violence against Women: Where Are We 25 Years after ICPD and Where Do We Need to Go?' (2019) 27 *Sexual and Reproductive Health Matters* 346.

income in millions of people. By all means, the economic crisis will result in many babies and children being abandoned by their families and, in the act of desperation, dumped as a result of unintended pregnancy. In addition to that, it is anticipated that the economic crisis would have spillover effects on mental health. Therefore, using utilitarianism theory and the concept of reproductive autonomy rights, it is argued that abortion is rational to ensure that the offspring are desired children and to ensure the mother's mental well-being, sane. The consequences to achieve happiness overlaps the rights of the fetus personhood especially when the fetus itself can't be granted a personhood status until it's born. Supporting this with the case of *Paton v British Pregnancy Advisory Service Trustee*, where it was decided that 'the life of the fetus is intimately connected with, and cannot be regarded isolation in from, the life of the mother - therefore fetus has no legal rights until it is born and has a separate existence to its mother. In Malaysian case that adopted the decision was the case of *Chin Yoke Teng v William Ui Ye Mein*, where the Court of Appeal held that 'an unborn child has no legal personality to sue and as far as a human being is concerned, it means a living human has never been interpreted to include the unborn child'

Following the utilitarianism and concept of reproductive autonomy, weighing its relevancy - abortion is arguably rational and acceptable in the time of COVID-19 to ensure the greatest pleasure for the vast majority of people, including the mother.

CHAPTER 4 - TELEMEDICINE ABORTION

The right of women and girls to sexual and reproductive health and rights (SRHR) includes the ability to access safe, legal abortions. According to international human rights law, denying pregnant women, girls, and other women access to safe abortions entails discrimination and jeopardizes a number of other human rights. Reproductive autonomy rights are protected in many international treaties including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Child (CRC) and many others. Malaysia ratified CRC and CEDAW, especially when the country holds no reservation to Articles 12 and 16(1) (e) of CEDAW reflecting the country's obligation to protect the safety and interest of women relating to their reproductive rights.

The use and applicability of telemedicine or telehealth made headway in the medical world during the COVID-19 pandemic. Approximately 47 million women in low- and middle-income countries were projected to be unable to use modern contraceptives and access abortion if a COVID-19 lockdown lasted for 6 months, with an additional 2 million for every additional 3 months of lockdown, according to an estimate by the United Nations Population Fund (UNPFA), the U.N. agency for sexual and reproductive health. United Nations Population Fund.

The World Health Organization (WHO) defines telemedicine as the delivery of medical services remotely utilizing electronic devices for "diagnosis, treatment, and prevention of disease and injuries, research and evaluation, and education of health professionals.¹² The main benefit of telemedicine is the ability to reduce or eliminate geographical distance.¹³ In the event of an emergency in a remote location, such as on a ship, in an airplane, or potentially on the battlefield, telemedicine is vital.¹⁴

Research has found that the success rate and safety outcomes of medical abortion through telemedicine appear to be very similar to those reported in the literature for in-person abortion services.¹⁵ In a study of 1000 women who underwent self-sourced medical abortion through an online telemedicine service (*Women on Web*), its reach to result that self-sourcing medical abortion through online telemedicine can be very successful, and the results are comparable to those of in-clinic methods. Adverse event reporting rates are low. Women are able to recognise the signs of potentially

¹² Marina Serper and Michael L Volk, 'Current and Future Applications of Telemedicine to Optimize the Delivery of Care in Chronic Liver Disease' (2018) 16 *Clinical Gastroenterology and Hepatology* 157.

¹³ Casey W Neville, 'Telehealth: A Balanced Look at Incorporating This Technology Into Practice' (2018) 4 *SAGE Open Nursing* 237796081878650.

¹⁴ Suhaiza Zailani, Yuserrie Zainuddin and Azizah Omar, 'Telemedicine in the Malaysian Public Hospitals: Are We There Yet?' [2009] *International Conference on Business, Finance and Tourism Management*.

¹⁵ M Endler and others, 'Telemedicine for Medical Abortion: A Systematic Review' (2019) 126 *BJOG: An International Journal of Obstetrics & Gynaecology* 1094.

catastrophic issues on their own, and the majority say they seek medical assistance when urged to do so. A study for the efficacy of telehealth medication during the COVID-19 pandemic, offers preliminary evidence that telehealth via main-order medication abortion care is practicable, safe, and effective. This study offers a telemedicine abortion efficacy rate of 95%, which is comparable to in-person provision as offered in earlier worldwide trials of telehealth medication abortion.¹⁶ However, despite its efficacy a study agrees that what restricted its applicability is when abortion is not recognized as essential health care in some countries. This study suggests that abortion should be completely decriminalized and that women should have the freedom to choose whether or not to have an abortion in whichever circumstances and this would necessitate health system reforms in terms of law, policy, and practice which would ensure everyone who has an unintended pregnancy the access to safe abortion.¹⁷

Many countries including Malaysia have implemented a restriction on movement including stay - at home lockdowns to slow down the spread of the virus. Abortion through telemedicine is researched to be convenient apart from its cheaper and appears to be as safe as in-person procedures.¹⁸ Many countries responded to COVID-19 by taking steps to make telemedicine more widely available for healthcare services in order to address some of the issues with the provision of in-person health treatments during the pandemic. For instance, New Zealand, England, Wales, Northern Ireland, Scotland, Italy, France, Canada, the United States and many other developed countries where the government has amended their abortion law to ensure the legality of expanding access to abortion during COVID-19. With the reform, health professionals are able to provide care via telemedicine throughout the COVID-19 pandemic while abiding by social distance guidelines and travel-related restrictions and lowering the risk of COVID-19 transmission. Telemedicine services have the potential to expand access to safe abortion during emergency situations like the COVID-19 pandemic since they can be utilized for counseling and assessment, the procurement of abortion medication, and clinical guidance during the abortion process.¹⁹

In conclusion, it is wise to conclude that telemedicine abortion has been more common since the pandemic. The usefulness and safety of abortion via telemedicine have been widely discussed in the past. Many countries have begun to mandate its application and reform the law to make it legally available in order to ensure that women's right to reproductive autonomy is upheld. In an emergency situation, such as COVID-19, abortion by telemedicine is a legitimate and safe procedure to use; therefore, the author believes that Malaysia should start expanding access to safe abortion by implementing a new method of abortion via telemedicine to ensure Malaysian women's access to safe abortion. This is owing to the fact that Malaysia is a signatory of the CEDAW Convention and does not have any reservations about the provisions of Articles 12 and 16 (1) (e). As such, the Malaysian government is under a statutory obligation to ensure that no woman is subjected to discrimination, denial of due process, or cruel, inhuman, or degrading treatment because she has had an abortion or for any other reason related to access to reproductive health.

CHAPTER 5 - A LOSING GAME ON ABORTION LAW IN MALAYSIA

Ishola concurs that the legal framework for abortion in each country plays a big part in determining the circumstances which render abortion safe.²⁰

Abortion is frowned upon and frequently brought up in private conversations in Malaysia. Not even reproductive health is getting any more attention. As to current, Malaysia has no government policy or legislation specifically addressing reproductive health.²¹

¹⁶ Ara Aiken and others, 'Effectiveness, Safety and Acceptability of No-test Medical Abortion (Termination of Pregnancy) Provided via Telemedicine: A National Cohort Study' (2021) 128 *BJOG: An International Journal of Obstetrics & Gynaecology* 1464.

¹⁷ Marge Berer, 'Abortion Law and Policy Around the World: In Search of Decriminalization' (2017) 19 *Health and Human Rights Journal*.

¹⁸ Roopan Gill and Wendy V Norman, 'Telemedicine and Medical Abortion: Dispelling Safety Myths, with Facts' (2018) 4 *mHealth* 3.

¹⁹ Sophie Cousins, 'COVID-19 Has "Devastating" Effect on Women and Girls' (2020) 396 *The Lancet* 301.

²⁰ Foluso Ishola, U Vivian Ukah and Arijit Nandi, 'Impact of Abortion Law Reforms on Women's Health Services and Outcomes: A Systematic Review Protocol' (2021) 10 *Systematic Reviews* 192.

The law on abortion under the Penal Code is also excessively restrictive and hasn't been updated since the most recent amendment in 1989. The current law is very old to fit the need of women for safe abortion in Malaysia including the need during Covid - 19. The Penal Code's most significant abortion-related section is Section 312; all other abortion-related sections up to Section 316 solely criminalize abortion and its providers. Section 312 of the Penal Code provides the grounds where abortion is allowed. Provided under this section, is the first ground where abortion is allowed when abortion is done to save the pregnant woman's life. The second ground is where the abortion is done to protect the mental and physical state of the woman. Administering abortion must be carried out only by the qualified and duly registered medical practitioner under the Medical Act 1971 provided that they decide it and does it in good faith. Despite that the promising grounds provided under the Penal Code that allow abortion to be procured under certain conditions, many past literatures agree that the existing law on abortion in Malaysia needs reform as a whole.

In a study by Farah Insyirah²² criticizes the grounds for abortion under the Penal Code. The literature described the grounds for abortion under the Penal Code are limited and it does not specifically indicate whether victims of rape are qualified to undergo an abortion. It is solely based on the doctor's paternalism, therefore urged the legal position on it should be re-evaluated to protect victim's rights and ensure women of vulnerability won't opt for illegal services due to the restrictive and the ambiguity of the law on abortion that we have in Malaysia. The lack of clarity and consistency in the legal framework around abortion is confirmed by this research as well, which shows that many people have difficulty accessing information and services linked to the abortion process in Malaysia. This literature concludes that the existing laws in Malaysia regarding abortion are so restrictive that they continue to result in the tragedies of many women, therefore suggesting making abortion available in and around the law and the legislative standards for making abortion accessible.

A whole study on the "Issues of Safe Abortions in Malaysia"²³ is another literature that contends that the law on abortion is a losing game for many women in Malaysia. The challenges many Malaysian women have faced in accessing safe abortions have been made clear by this literature. This study consists of 3 parts including : a survey of medical students' knowledge and attitudes towards abortion; a study of doctors' knowledge, attitudes, and readiness to offer abortion-related services; and a study at women's perspectives on abortion. Following this study, it was found that women and doctors had different interpretations of the legislation, which led to a negative perception of the morality of abortion. As a result, women were less able to receive safe abortions, which caused them to choose unsafe services.

In a study on the impact of the law on Nirmala Tapa, the literature agrees that until the legislation is beneficially changed and the guidelines are implemented, women and healthcare workers in Malaysia would likely continue to contend with the possibility of prosecution. Proper, detailed laws surrounding special circumstances should be made compassionately. These will enforce uniformity in how health care professionals approach termination of pregnancies.²⁴

According to RRAAM study²⁵ on the sexual and reproductive health services offered by private clinics in Peninsular Malaysia, Malaysia's abortion law required revision in terms of the abortion services providers, the cost of abortion, and the abortion procedure that is available in Malaysia. The findings of this study are in agreement with the necessity for regulation and the development of a policy to standardise them in Malaysia in order to prevent misunderstandings between the private and public sectors that can encourage women to choose dangerous services.

A conclusion can be drawn from the local literature that the right of women to a safe abortion is not sufficiently protected by Malaysia's abortion laws. Currently, Malaysia's abortion laws are ambiguous, complex and outdated. Because of this, even if numerous studies have demonstrated the

²¹ Women's Aid Organisation, 'We Must Improve Maternal, Sexual, and Reproductive Health Rights in Malaysia - Women's Aid Organisation' (25 April 2022) <<https://wao.org.my/we-must-improve-maternal-sexual-and-reproductive-health-rights-in-malaysia/>> accessed 18 March 2023.

²² Farah Insyirah Azman and Kritigeswari Ramesh, 'THE INFLUENCE OF MORALITY, ACTIVISTS AND HOLISTIC VIEW BEHIND CURRENT LAWS AND POLICIES, IN THE EFFORT TO DESIGN A BETTER GUIDELINE GOVERNING ABORTION IN MALAYSIA' [2021] International Waqaf Ilmu Nusantara.

²³ Low and others (n 1).

²⁴ Nandini Archer, 'The Law, Trials and Imprisonment for Abortion in Malaysia' (2018).

²⁵ Amanda Tiew and others, 'An Exploration of Sexual and Reproductive Health (SRH) Services Provided by Private Clinics in Peninsular Malaysia' (2020).

effectiveness and safety of a new type of abortion delivered via telemedicine, it will become even more challenging to implement it in Malaysia. Therefore, in Malaysia, significant reform and the law required an update in order to guarantee that women's reproductive right to safe and legal abortion is safeguarded under the law, including their right to access to abortion via telemedicine during COVID-19. According to the study by Van Ooijen²⁶ which this study concurred with, almost half of the women who had an abortion using WoW reported encountering obstacles to abortion treatment due to COVID-19. Hence, this study too concurs that policies and the law should be amended to legalize abortion via telemedicine, which is crucial in the event that an emergency like COVID-19 worsens in the future. It is because only a reform of a legislative framework could create more enabling surrounding for abortion including the legality of the new method of abortion via telemedicine.

CHAPTER 6 - TELEMEDICINE & ITS CHALLENGES OF APPLICABILITY IN MALAYSIA

WHO has recommended that abortion via telemedicine is effective, safe, and appropriate for use including in a situation like COVID-19. However, the author believes that its acceptance and applicability in Malaysia may be challenging. As concur from the past literature in the previous chapter, most of them describe that abortion law in Malaysia is outdated and ambiguous which makes it even more challenging in its applicability. The Penal Code, provided under Section 312 - 318 is the only existing law currently being enforced for abortion to which the requirements and circumstances under which abortion is legal are not clearly defined. The law was very old, there has been no development to it since the last amendment in 1989. The Penal Code is rather more and less to criminalize women and abortion providers providing the services. At the same time, the societal stigma, and religious beliefs surrounding abortion in Malaysia and the acceptance to it make it more difficult to educate on the new method of abortion via telemedicine. Many of religious groups consider abortion to be a sin and forbidden, despite that views on abortion within different religions vary and allow it in certain circumstances and gestation limits.

In comparison with the law on abortion in England and Wales, Malaysia is one such country that suffers from a lack of clear interpretation and understanding of these laws and policies, which results in clashing understanding, inadequate implementation, and limiting access to safe abortion services within healthcare services thus making it challenging of its applicability of abortion access via telemedicine.

The legal gestation limit, for example, is nowhere to be found in the legislation. The Penal Code makes no mention of when abortion is legal. The National Fatwa Council issued a fatwa that allows abortion up to 120 days after conception if the mother's life is in danger or the foetus has foetal damage. Fatwa, on the other hand, is not applicable to non-Muslims and varies in each state in Malaysia. On the other hand, the Termination of Pregnancy Guideline (TOP) recommends abortion be performed within 22 weeks of gestation; however, the guideline recommendation is not legally binding. That is, any doctor or woman who obtains an abortion outside of the recommended gestation period in the guideline is arguably not violating the law, but rather busting professional ethics. The law is silent about the legal gestation limit of abortion. The author compared the law in Malaysia with the law of England and Wales on abortion. Provided under Section 1(1)(a) of the Abortion Act 1967, the section explicitly stated that most abortions are permitted within the first 24 weeks of pregnancy.

The Penal Code also makes no mention of a legal location where abortions can be performed, for instance, whether it can be done in a hospital, at home, or any other authorized private location. In comparison with the law in England and Wales, provided under Section 3 of the Abortion Act 1967 says that any form of treatment for termination of pregnancy must be performed in a hospital owned by the National Health Service Trust or NHS Foundation Trust or in a venue licensed for that purpose. Furthermore, the United Kingdom, as provided by the government website of the Department of Health and Social Care, has a guideline on the independent clinics and hospitals approved to perform abortions. Meanwhile in Malaysia, despite abortion being available in public hospitals according to the TOP Guideline, there is no centralized list of certified abortion providers in Malaysia and because of that, private-sector abortion services are frequently uncontrolled. The Reproductive Rights Advocacy Alliance Malaysia (RRAAM) reports that there are an estimated 240 clinics nationwide offering abortion services, but not all have been vetted for quality of care or safety.²⁷

²⁶ Liën Trudi van Ooijen and others, 'A Trans-National Examination of the Impact of the COVID-19 Pandemic on Abortion Requests through a Telemedicine Service' (2022) 48 *BMJ Sexual & Reproductive Health* 179.

²⁷ Tiew and others (n 25).

The legality of abortion in Malaysia is still mostly unknown to many healthcare professionals. The crime culture on abortion is another challenge. Abortion was viewed as a wicked and morally repugnant act by doctors working in government-run healthcare facilities. Many women were advised to carry their pregnancies to term and then place the child for adoption.²⁸ The majority of understanding about abortion in Malaysia is affected by their discretion and judgmental attitude. These challenges have led to many women choosing unsafe abortions or, in the worst cases, dumping their unwanted babies into rubbish bins, and toilets or drain out of desperation. In Malaysia, issues of baby dumping are common. The numbers are alarming. Malaysia has the highest percentage of baby dumping across South East Asia, with an average of 100 babies per year.²⁹

The Police Force in Malaysia reports that in the four years between 2018 and 2021, 443 babies were reported as having been discarded. Additionally, out of the 443 babies that were dumped between 2018 and 2021, 149 were found alive and 249 were found dead. Unrecoverable newborn deaths make up about 66% of the total. The primary deputy director of the Bukit Aman Sexual, Women, and Child Investigations Division, Assistant Commissioner - Siti Kamsiah Hassan, concurs that Malaysia still has a high prevalence of infant dumping, with an average of 10 dumped cases being recorded each month.³⁰ In addition to it, women in Malaysia have issues finding information on abortion. - in most cases, they could only get the information from friends and co-workers.³¹

This is particularly the effect of the restriction by Section 4 of the Medicines Advertisement and Sale Act 1956 that restrict abortion advertisement and publications in Malaysia. All these legislative restrictions and limitations on abortion in Malaysia have forced many women to give up looking for safe and legal services, which has caused them to look for alternative abortion services which are normally not permissive of safety.

In relation to access to telemedicine abortion, the UK government has swiftly implemented a new amendment to the law that permits women to acquire tablets for an early medical abortion via telemedicine and to take both pills at home for gestational up to 9 weeks and 6 days. The prescription and administration of medication is authorised by Section 1(3B) of the Abortion Act of 1967 if Sections 1(3C) - (3D) applies and the doctor has a good faith belief that the first medication will be administered within ten weeks of gestation. The law also allows for the self-administration of abortifacients to take place in the patient's normal home in England or Wales. A registered medical practitioner in England and Wales was allowed to prescribe abortifacients at their ordinary home under subsection 1(3) (c). If a patient has already had an in-person or telemedical consultation with a doctor, registered nurse, or licensed midwife, subsection 1 (3D) permits the patient's regular home in England or Wales to be used as a location where abortifacients can be self-administered. The amended law now permits women to obtain abortions via telemedicine without having to visit the hospital in person, despite still maintaining the restriction in OAPA and gestation limit.

Things are different in Malaysia. It is difficult to imply telemedicine abortion in Malaysia as the law on abortion in Malaysia was mostly unresolved even before COVID-19 took place. Abortion by telemedicine is not the subject of any amendments or proposals and the Telemedicine Act 1997, which was last revised in 1997, is also vague on the subject of abortion. Access to safe abortion methods is also somewhat restricted. Dilation and curettage is still the primary method employed in public health care in Malaysia, in contrast with England and Wales and the UK as a whole where abortion medications are made available for the doctors in an authorised abortion provider. In Malaysia, the ministry failed to register abortion pills so that they would be available to the doctors locally which force women to seek assistance from online resources. Abortion pills are officially unattainable at public clinics.

In conclusion, the abortion legislative framework in Malaysia is outdated and ambiguous which leads to many issues surrounding access to safe abortion. It has too be agreed by the past literature as I have discussed in the previous chapter. Despite that abortion via telemedicine is legitimate its use

²⁸ Wen Ting Tong and others, 'Exploring Pregnancy Termination Experiences and Needs among Malaysian Women: A Qualitative Study' (2012) 12 BMC Public Health 743.

²⁹ Athira (n 3).

³⁰ Sinar daily, 'Baby Dumping Still Rampant' (17 February 2022)

<<https://www.sinardaily.my/article/171553/malaysia/national/baby-dumping-still-rampant>> accessed 22 February 2023.

³¹ Tong and others (n 28).

during COVID-19 and its safety of it proven by the WHO, the applicability of it in Malaysia can be challenging.

CHAPTER 7 - CONCLUSION & RECOMMENDATIONS

Access to safe abortion is necessary to respect every woman's right to reproductive autonomy, despite COVID-19. Telemedicine abortions have become more common during the COVID - 19. Many countries, including England and Wales, have started amending their laws to guarantee the legality of abortion via telemedicine and to ensure that this access to abortion is allowed by the law. Despite the fact that medication abortion performed via telemedicine is just as safe and practicable as when the procedure is carried out in person, it is difficult to legitimize its use in Malaysia. This is because Malaysia's abortion law is currently out-of-date and has ambiguous legal status.


In this article, the author utilizes the principle of reproductive autonomy to contend that every woman has the autonomy to make decisions about her own body and reproductive functions. Following utilitarianism theories, the author takes into consideration the socio-economy needs of the mother and makes a conclusion that abortion is arguably relevant during COVID-19 to secure the highest pleasure for the majority of people, including the mother. Further to this, the author then demonstrates how telemedicine has paved the road for safe abortion access during COVID-19, globally. In the following chapter, the author proves that the law on abortion is a losing game in Malaysia and required reform by counting on the past literature. Following that, in a comparative study provided in the last chapter, the author goes on to claim that it is difficult to implement the use of abortion via telemedicine in Malaysia since the country's abortion laws are unresolved in nature which has led to widespread misunderstanding and limited services accessible to women

In conclusion, the author supports to boost of access to safe abortion through telemedicine in Malaysia, particularly in light of Malaysia's ratification of CEDAW Articles 12 and 16(1)(e), which reflect the obligation of the government to protect and uphold women's right to reproductive autonomy. The author does, however, think that there are still a lot of things that need to be done about Malaysia's abortion laws. The possibility of telemedicine applicability in Malaysia appears to be unlikely unless the law is reformed.

The author then makes the recommendation that a specific law should be passed to address both telemedicine abortions and abortion as a whole. By examining the latest legal developments on telemedicine abortion in England and Wales, Malaysia can take the first step towards reforming this area of the law. The Abortion Act 1967, a legal framework that sets standards for the provision of safe and legal abortion services, is in effect in England and Wales. The act specifies the conditions and requirements for when abortions are permitted. The UK government has also revised Section 1 of the Abortion Act 1967 to legalise telemedicine abortion, notably paragraphs 3B, 3C, and 3(D) of the act. At the same time, this country continues to uphold OAPA as a criminal statute to deter unnecessary illegal abortions that could endanger the health of women. Therefore, following that Malaysia should too start taking a significant initiative to develop its own abortion legislation or amend and improve the current legislative framework on abortion in order to meet the demands for abortions including the need during COVID - 19 thus safeguarding women's rights to reproductive autonomy under the law, simultaneously makes abortion safer and accessible.

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