

Abstract

Nowadays, a pregnancy can be created not only from sexual intercourse between a man and a woman but also from assisted reproductive technology. This technology starts many ideas of legal thoughts. In Criminal law, a question of the domination and rule of law arises from this technology. An unlawful abortion is one of many possible illegal actions that can be occurred during employing this technology. In the Criminal Code of Thailand, provision 305 provides lawful abortion only in two cases. First, it is because of the health of mother. Secondly, the pregnancy is a result of committing a crime in provision 276, 277, 282, 283 and 284.

The first issue of pregnancy from assisted reproductive technology is when pregnancy of twin is more than proper. This over amount of twin's pregnancy causes serious harm to the health of mother which may lead a doctor to do the abortion. Moreover, in a procedure of, the doctor has to select and eliminate unwanted embryo out side uterus. The question arises out of this event that whether this procedure is legal abortion as providing in provision 305 (1). Since the present law may not concern to the procedure of embryo selection, the meaning of being a person and a legal abortion should be combined to take into consideration of this issue.

The second issue is when a pregnancy occurs by compulsorily injecting sperm into a vagina. Although this action may not be deemed to be a guilty of rape in provision 276 since it lacks of "mens rea," a guilty mind, on that provision, it may be deemed to be a guilty of indecent assault in provision 284. Therefore, if the woman is no longer desire to carry her pregnancy, a doctor can legally abort this pregnancy as allow in provision 305 (2).

Since there is no any provision in the current Criminal Code of Thailand directly legislate the law regarding pregnancy from assisted reproductive technology, adapting this present law to enforce in this situation is improper. To be effective, there should be a newly specific law to enforce in this situation or there should be an amendment to the current law to concern about this situation