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Liberalization of Health Services in Indonesia in The Context of Justice

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ABSTRACT. Health is an important factor for maintaining living standards. In human rights which is explained in more detail, health is included in the rights of every human. That rights also includes right to get good health services. But in practice, the health services provided sometimes are not in accordance with what was been regulated in the code of ethics, obligation and violating human rights. This study compared one

cases with another cases. We analyze the cases by comparing existing regulations, such as Indonesian constitution, health profession ethics and hospital ethics. The study emphasized and found that in the Indonesian Constitution and the code of ethics there are no rules for distinguishing patients. In terms of health, all communities should be considered equal. Because this concerns human rights which say that health is an absolute right for every human being. The hospitals and the staff who work in that hospitals can be threatened with criminal law or civil law. The study concluded that discrimination in health services should not occur in Indonesia or in other countries. Because in Indonesia, health is the ideals and goals of Indonesian nation, and also an element of human rights. Health services in Indonesia must be based on Pancasila and based on humanitarian values, health ethics, professionalism, equality and anti-discrimination, equity and justice.

KEYWORDS. *Health Liberalization, Justice, Health Services, Human Rights*

I. INTRODUCTION

Health is one of the elements of human rights, and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in the Pancasila and the constitution of Republic of Indonesia in 1945. The meaning or understanding of health itself is someone who is in healthy condition, both physically, mentally, spiritually and socially, which enables everyone to live productively socially and economically ([Law No. 36/2000](#)).

In terms of fulfilling health, this is one of the government's responsibilities, as stated in the law of the republic of Indonesia number. 36 of 2009 article 14 paragraph 1 which states that: "the government is responsible for planning, regulating. Organizing, fostering, and supervising the implementation of equitable and affordable health efforts by the community. It can be said that basically health problems involve all aspects of life and cover all the time of human life, both past life, present and future life.

Every person has the the right to live in prosperity phisically and spiritually, live and get a good and healthy enviroentment and has the right to receive health services. That is means, everyone has the right to provide services in the health sector to support everyone's life. The government is responsible for the community to improve the level of public health. In this case, the government's effort to improve public health is by holding health facilities namely, hospitals and the governments also providing health insurance cards for the people who are able to afford them (Simamora, et.al., 2020; Riza, 2018).

Article 4 in Constitution of Republic Indonesia Number 36 of 2009 concerning health states that "everyone has the right to heath". In this case, the right to health includes all aspects of health , such as obtaining needed health services. In an effort to improve health which is the goal and aspiration of the Indonesian nation, the government provides facilities in the norm of hospitals that provide medical services (Koto & Asmadi, 2021; Hadi, 2018; Dananjaya, Dewi, & Suryani, 2019).

In terms of health services, hospitals as one of the facilities that support efforts to improve public health and as parties that provide health services, should be able to provide health services for each individual. The Hospitals is "a health services institution that organizes individual health

services in a comprehensive manner that provides inpatient, outpatient and emergency services". Whereas, what is meant by plenary health service is health as highlighted by Notoatmodjo (2010) which includes:

1. Promotive Health Services, which are activities and / or a series of health service activities that prioritize health promotion activities.
2. Preventive Health Services, which is a prevention activity against a health / disease problem.
3. Curative health services, namely an activity and / or a series of medical activities aimed at healing diseases, reducing suffering due to illness, controlling disease, or controlling disability so that the quality of patients can be maintained as optimal as possible.
4. Rehabilitative health services, namely activities and / or a series of activities to return former sufferers to the community so that they can function as members of the community that are useful for themselves and the community as much as possible according to their abilities.

But we find many cases of patients who cannot get health services due to the availability of costs, so that the handling of these patients is caught.

As a means of public service, the hospital should be able to adhere to Hospital Ethics and Law as well as the obligations of existing hospitals, because this is also regulated in the Hospital Health Act No. 44 of 2009. Hospital refusal of patients certainly violates and contradicts several hospital obligations (Notoatmodjo, 2010), namely:

1. Providing safe, quality, anti-discriminatory and effective health services by prioritizing patient interests in accordance with hospital service standards.
2. Providing facilities and services for poor people.

3. Carry out social functions, among others by providing facilities for poor / poor patients, emergency services without advances, free ambulances, services for victims of disasters and extraordinary events, or social services for humanitarian missions.
4. Carry out hospital ethics.

But there are many cases that say otherwise. Many cases occur, there is a distinction in health services to the community, more clearly the poor. The existence of a class system at the Hospital is also one form of the differentiation of health services. In that case we can clearly see the existence of social inequality. The existence of discriminatory treatment in the provision of health services to people who seek treatment using health insurance cards from the government is a case that often occurs in Indonesia. There are even some cases of hospitals that abandon or reject patients who use insurance cards for various reasons such as the absence of a treatment room, the absence of medical personnel, and the necessity to pay down payment before obtaining health facilities. This is certainly contrary to the professional ethics of health, the obligation of the hospital, the obligation of health care providers and contrary to existing laws ([Hatta, 2018](#); [Sutarno & Maryati, 2021](#)).

So, in this case, the professionalism of the guarantor and health workers is questionable. It is also concerned with enforcing Justice. Which is stated in the opening of the Law of the Republic of Indonesia and in Pancasila, namely Social Justice for all Indonesian people ([Susila, 20121](#); [Syauf & Haiti, 2021](#)).

Because Health is one of the human rights and one of the ideals of the Indonesian nation, if every activity and effort to improve the highest degree of public health is carried out based on non-discriminatory, participatory, protection and sustainable principles.

The approach that used in this study is the statutory approach (statute approach). And in the preparation of this journal using normative juridical research. The main legal material that used in the research for writing this journal is by conducting library studies, to obtain legal material that includes, *first* primary legal material, obtained from the 1945 Constitution of Indonesia, Constitution of Indonesia Number 36 in 2009 about Health, Indonesian Constitution Number 44 in 2009 about Hospitals, Indonesian Constitution Number 1 in 1946 about KUHP, Code of Civil Law, Indonesian constitution Number 29 in 2004 about medical practitioners, Indonesian hospital codes of ethics, Indonesian constitution Number 30 in 1999 about arbitration and alternative dispute resolution, Supreme court rules Number 1 in 2008 regarding mediation procedures in court, and *second* secondary legal material namely legal material that provides an explanation of primary legal material, in the form of books, literature, documents, archives, opinion of legal experts, as well as the result of research by researchers in the legal field concerned with the issues discussed.

Legal material analysis considering that this research is normative legal research and legal material which is examined secondary legal material consisting of primary material. The data analysis is carried out qualitatively normatively, meaning to describe with words so that it can be understood. Therefore, the problems are more addressed to the provisions of the provisions, principles of legal principles, concepts, and other legal materials. Then the existing problems are analyzed, and solutions are sought, which are finally formulated in the form of questions.

II. HEALTH LIBERALIZATION AND THE QUESTION OF JUSTICE IN INDONESIA

The government that has responsibility for the community in making efforts to improve public health for disadvantaged communities is to guarantee financing for underprivileged people as stated in Article 6 paragraph (1) letter b of the Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals, said that: "*Guaranteeing the financing of health services at the Hospital for the poor, or poor people according to the provisions of the legislation of the invitation.*" Government responsibilities that must be fulfilled in this case are:

1. Providing resources in the field of health that is fair and equitable for all people to obtain high health degrees.
2. Providing all forms of quality, safe, efficient and affordable health efforts.
3. Carry out public health insurance through the national social security system for individual health efforts. The implementation of the social security system in question is carried out in accordance with the provisions of the legislation.
4. Providing environment, order, health facilities both physically, and socially for the community to achieve high health status.
5. Providing access to information, education, and health service facilities to improve and maintain a high degree of health.
6. Responding to the rejection of the provision of health services to disadvantaged communities, shows that there is less optimal supervision and development of technical services for health services by the government. So that there is still a refusal of medical treatment carried out by the hospital for various reasons. This is related to the

mandated Law Number 36 of 2009 concerning Health Article 14 paragraph 1, which reads: "The government is responsible for planning, regulating, organizing, fostering and supervising the implementation of equitable and affordable health efforts for the community.

In terms of increasing the level of public health, it is not only the government that is obliged to take responsibility in improving public health. However, all parties have a commitment to the management of hospitals, leaders and employees and private hospitals and government-owned hospitals. Hospitals that reject patients mean violating the Law, because health care is an absolute right to get by each individual, regardless of the patient's social status (Tongat, 2020; Vatikawa & Amnawaty, 2018).

If there is a hospital that rejects the patient, it can be addressed in the case of rejection of medical services regulated in Article 304 of the Criminal Code: "Whoever deliberately places or leaves a person in misery, even though according to the law applies to him or because of his agreement must give life, care or maintenance to that person, threatened with imprisonment for a maximum of two years and eight months or a fine of at most four thousand five hundred rupiahs."

In addition, Article 531 of the Criminal Code also regulates criminal acts about refusing medical services: "Whoever witnesses that someone is facing death does not give help that can be given to him without properly causing danger to himself or others, if threatened by people it dies, with a maximum sentence of three months imprisonment or a fine of at most four thousand five hundred rupiahs" (Syauf & Haiti, 2021; Vatikawa & Amnawaty, 2018).

It is also categorized as a criminal act stipulated in Article 190 of Law Number 36 Year 2009 concerning Health which reads: "The leaders of health service facilities and / or health workers who practice or work in health service facilities that intentionally do not provide first aid to patients who are in an emergency as referred to in Article 32 paragraph (2) or Article 85 paragraph (2) shall be punished with imprisonment of a maximum of 2 (two) years and a fine of no more than Rp. 200,000,000.00 (two hundred million rupiahs) "

And, if the rejection results in a disability or death in a person, then it can be ensnared by Article 190 paragraph (2) of Law Number 36 Year 2009 concerning Health which states: "In the event that the acts referred to in paragraph (1) result in disability or death , the leader of the health service facilities and / or health workers is punished with a maximum of 10 (ten) years imprisonment and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah) " .

Apart from the hospital, this also has to do with the doctor. In serving patients, a doctor must not differentiate patients and must also prioritize humanitarian calls rather than material benefits. Because the doctor is a profession, then in carrying out his work must be based on or refer to the professional ethics formulated by his professional organization.

In carrying out its duties, a doctor is required to be professional in serving his patients. Professional doctors mean doctors who prioritize the interests of their patients. Because patients are objects of the doctor, doctors are required to prioritize humanitarian interests rather than material benefits. Someone who is a professional does not base his task on material benefits. But a doctor and health worker must prioritize the safety of the patient, or the victim compared to who will pay for his services later ([Notatmodjo, 2010](#)).

In the Health Law, it contains the rights and obligations that must be fulfilled in the health sector such as, everyone who has the right to health, everyone also has the same rights in obtaining resources in the health sector, everyone has the right to obtain services in the health sector safe, quality and affordable ([Acrhana, 2020](#); [Kis-Katos, Almasdy, & Putra, 2021](#)).

A doctor, in his duty has a noble reason, namely trying to be able to keep patients healthy or to cure patients. Because of this, it is only natural that what the doctor does is worthy of obtaining legal protection. Any boundary that can be protected by law and is not protected by law is a problem. And of course, knowledge of the limits allowed by law is very important, for doctors and for patients and law enforcement ([Johan, 2005](#)). So, in this case, doctors and health providers and law enforcers must understand the limitations of health law, so that they can determine whether the action is against the law or not.

Legal aspects are created and created to protect the interests of the provision of health services that are needed. So that in this case, if the patient or family of the patient feels aggrieved by the doctor or the health care provider, he will take legal action ([Johan, 2005](#)).

Procedure for resolving medical disputes through Indonesian medical disciplinary board, which is an authorized institution in determining whether there are errors made by doctors and dentists in applying the disciplines of medicine and dentistry, as well as the authority to determine sanction ([Johan, 2005](#); [Aini, Purba, & Meilliana, 2018](#); [Manuputi, 2019](#); [Al Gani, 2020](#)).

Based from Constitution of Indonesia Number 29 in 2004 about medical practice, the task of Indonesian Medical Dicipinary Board are:

1. Receive complaints, examine, and decide cases violation of the proposed dicipline of doctors and dentist; and

2. Develop guidelines and procedures for handling violations doctor or dentist discipline.

In the case of complaints, it is regulated in article 66 paragraph 1 which states that those who can complain to MKDKI are those who know or feel harmed by the action of relevant Doctors and Dentist. Article 66 paragraph 2 says that in the case of a complaint, it must be included with the identity of the complainant, the name, address of the doctor's practice place, the time of action given by the doctor and must be accompanied by reasons for complaints. Paragraph 3 says that complaints to MKDKI do not eliminate the right to report suspected crimes to the competent authorities and/ or sue civil losses to the court.

Medical settlement through MKDKI has no procedure to resolve the problem by means of mediation, reconciliation or negotiation between the doctor concerned with the patient or his legal counsel, and MKDKI is not authorized to decide compensation for patients.

If MKDKI and MKDKI-P (provinces) have not yet been formed, then the medical dispute will be checked by MKEK IDI in each province in Indonesia. MKEK in each province is a medical ethics enforcement institution that has existed since the establishment of IDI. MKEK is also a medical discipline enforcement agency that was previously held by MKDKI.

In article 22 paragraph 1 concerning complaints in organizational guidelines and work procedures MKEK IDI says that complaints can come directly from complainants (patients, colleagues, other health workers, health institutions, and professional organizations), referrals from MKEK Branches to Regional MKEK or referral from regional MKEK for central MKEK, IDI findings at the same level, findings and or requests for MKEK professional ethics development division at the same level, results of

MKDKI verification or professional disciplinary institutions or ethical development institutions that find allegations of ethical violations in accordance with applicable regulations determined later by the Central MKEK in accordance with the principle of justice and the achievement of the objectives of professional ethics development.

Apart from the two resolutions of the case, the process of resolving a medical dispute case can also be settled Civilly and Criminally in the General Court.

In addition to complaining about Doctors or Dentists who are suspected of being negligent malpractice to MKDKI (Indonesian Medical Disciplinary Board) in accordance with article 66 paragraph 3 of the Law. No. 29 of 2004 concerning Medical Practice, patients can also file a lawsuit in court.

Plaintiffs sued within the scope of the general court using civil procedural law. The plaintiff must be able to prove the arguments against the defendant as stipulated in article 163 HIR Article 283 of the RBG or article 1865 of the Civil Code which contains: every person who argues that he has a right or to uphold his own rights or deny other people's rights an event, is required to prove the existence of the rights or events. Here, there are two types of lawsuits, namely lawsuit for default and lawlessness. Default is the failure to fulfill an achievement by one of the parties due to an error ([Suryadhimirtha, 2011](#)).

As a result of the default lawsuit is the emergence of an obligation to compensate as contained in book III of the Civil Code. In an artificial transaction, a default can be filed if a health worker who practices independently or is in a hospital has promised to provide health services or therapeutic transactions, but it turns out that he violated the promise even though he was not forced.

The right of patients to get compensation for defaults is regulated in the provisions of health law stipulated in Article 58 of the Law No. 36 of 2009 namely:

- a. *"Every person has the right to claim compensation for someone, health workers who cause harm due to errors or negligence in the health services they receive".*
- b. *"The compensation claim as referred to in the previous paragraph does not apply to health workers who take action to save lives or prevent someone's disability in an emergency."*

III. CONCLUSION

Health is an absolute right for each individual. Matters relating to supporting and improving the quality of public health apply to everyone without the presence of racism, that meaning that the implementation must be equally. The government in terms of improving the quality of public health, is responsible to the community. And efforts made by the government to improve the quality of public health, one of which is by facilitating in the health sector such as providing hospitals, providing insurance to the poor and others. In addition to the government, the organizers and parties engaged in the health sector must be also held accountable. Provide services based on ethics and obligations that have been arranged to provide direction on how to serve the community as they should. Because all who work in the health sector have promised to prioritize humanitarian interests. And if there is an omission in the provision of health services, patients or parties who feel disadvantaged can complete or can report it to the authorities. For example, negligence made

by doctors can be reported to MKDKI (Indonesian Medical Dicipinary Board) to complete it. Or if it is related to the organizer or the hospital, the party who feels disadvantaged over the health service can file a criminal or civil claim to the general court.

IV. REFERENCES

- Aini, Y. N., Purba, Y. A., & Meilliana, R. (2018). Trade Globalization and Its Impact on Welfare in Indonesia. *Journal of Indonesian Social Sciences and Humanities*, 8(1), 59-74.
- Al Ghani, M. (2020). Pengaruh FDI dan Free Flow of Services Sektor Kesehatan ASEAN Terhadap Kesiapan Menghadapi Pandemi COVID-19. *Jurnal Kebijakan Kesehatan Indonesia: JKKI*, 9(3), 158-166.
- Archana, V. (2020). Does Trade Liberalization Improve Public Health? The Effect of Free Trade Agreements and Multilateralism in Pharmaceutical Sector in India. *International Journal of Health Services*, 50(2), 137-146.
- Dananjaya, A. N. D., Dewi, A. A. S. L., & Suryani, L. P. (2019). Sanksi malpraktik dan resiko medik yang dilakukan oleh dokter. *Jurnal Analogi Hukum*, 1(1), 6-10.
- Hadi, I. G. A. A. (2018). Perbuatan Melawan Hukum dalam Pertanggungjawaban Dokter terhadap Tindakan Malpraktik Medis. *Jurnal Yuridis*, 5(1), 98-133.
- Hatta, M. (2018). The position of expert witnesses in medical malpractice cases in Indonesia. *Al-Ahkam*, 28(1), 47-72.
- Hidayati, N., Almasdy, D., & Putra, A. S. (2021). Global trade and health: an Indonesian perspective on the asean medical device directive policy. *Berita Kedokteran Masyarakat*, 37(1), 1-6.
- Johan, B. (2005). *Doctor's Accountability Health Law*. Jakarta: Rineka Cipta.

- Kis-Katos, K., Pieters, J., & Sparrow, R. (2018). Globalization and social change: Gender-specific effects of trade liberalization in Indonesia. *IMF Economic Review*, 66(4), 763-793.
- Koto, I., & Asmadi, E. (2021). Pertanggungjawaban Hukum Terhadap Tindakan Malpraktik Tenaga Medis di Rumah Sakit. *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*, 4(2), 181-192.
- MANUPUTI, A. (2019). Kajian Hukum Internasional Terhadap Liberalisasi Perdagangan di Bidang Jasa oleh Negara-Negara ASEAN Melalui AFAS. *Yure Humano*, 3(2), 1-20.
- Naya, A. Z. (2020). The Liberalization of the Law on Resources: The Case Study of the Health Sector Liberalization in the Post-Reformation Era. *International Journal of Psychosocial Rehabilitation*, 24(8), 7453-7458.
- Notoatmodjo, S. (2010). *Etika dan Hukum Kesehatan*. Jakarta: PT Rineka Cipta.
- Riza, R. A. (2018). Tanggung Jawab Dokter terhadap Pasien dalam Hal Terjadinya Malpraktik Medik Dilihat dari Perspektif Hukum Perdata. *JCH (Jurnal Cendekia Hukum)*, 4(1), 1-8.
- Simamora, T. P., Batubara, S. A., Napitupulu, I. E., & Sitorus, R. T. (2020). Perlindungan Hukum Terhadap Pasien dalam Pelayanan Medis di Rumah Sakit Umum. *Al-Adl: Jurnal Hukum*, 12(2), 270-279.
- Suryadhimartha, R. (2011). *Hukum Malpraktik Kedokteran Disertai Kasus dan Penyelesaiannya*. Yogyakarta: Total Media.
- Susila, M. E. (2021). Medical Malpractice System in the United States of America: Lesson to Learn for Indonesia. *Yuridika*, 36(2), 367-382.
- Sutarno, S., & Maryati, M. (2021). Information of Medical Malpractice and Risks in The Informed Consent Process Before Surgery in Indonesia. *Yustisia Jurnal Hukum*, 10(2), 269-290.
- Syauf, A., & Haiti, D. (2021). Application of Restorative Justice Values in Settling Medical Malpractice Cases. *International Journal of Criminology and Sociology*, 10(1), 103-110.

- Tongat, T. (2020). The Criminal Liability of Doctors in the Case of Malpractice in Indonesia. *Indian Journal of Forensic Medicine & Toxicology*, 14(2).
- Vatikawa, A., & Amnawaty, A. (2018). Medical record data counterfeiting by doctors in Indonesia reviewed from the ethics, discipline, and legal aspects. *Fiat Justisia: Jurnal Ilmu Hukum*, 12(3), 224-233.
- Putra, I. E., Danamasi, D. O., Rufaedah, A., Arimbi, R. S., & Priyanto, S. (2018). Tackling Islamic terrorism and radicalism in Indonesia by increasing the sense of humanity and friendship. In *Handbook of research on examining global peacemaking in the digital age* (pp. 94-114). IGI Global.
- Rokhmad, A. (2012). Radikalisme Islam dan upaya deradikalisasi paham radikal. *Walisongo: Jurnal Penelitian Sosial Keagamaan*, 20(1), 79-114.
- Ronald D. (1989). Terrorism and the Media: Problems, Solutions and Counterproblems. *Political Communication and Persuasiorz*, 6(2), 311-339.
- Sirry, M. I. (2020). Muslim student radicalism and self-deradicalization in Indonesia. *Islam and Christian–Muslim Relations*, 31(2), 241-260.
- Taher, T., et.al. (2010). *Radikalisme Agama*. Jakarta: PPIM IAIN Jakarta.
- Turmudzi, E., & Sihbudi, R (eds.) (2005). *Islam dan Radikalisme di Indonesia*. Jakarta: LIPI Press.
- Umar, A. R. M. (2010). Melacak akar radikalisme Islam di Indonesia. *Jurnal Ilmu Sosial dan Ilmu Politik*, 14(2), 169-186.
- Utari, I. S. (2017). Community of Children Inmates and Assistance System in The Penitentiary: The Impact of Child Social System to the Assistance Process at Kutoarjo Children Penitentiary. *IJCLS (Indonesian Journal of Criminal Law Studies)*, 2(2), 111-120.
- Vernon, G. M. (1962). *Sociology of Religion*. New York: McGraw Hill Book.
- Wahyuni, F. (2019). Causes of radicalism based on terrorism in aspect of criminal law policy in Indonesia. *Jurnal Hukum dan Peradilan*, 8(2), 196-213.

Windiani, R. (2017). Peran Indonesia dalam memerangi terorisme. *Jurnal Ilmu Sosial*, 16(2), 135-152.

The right to health for all people means that everyone should have access to the health services they need, when and where they need them, without suffering financial hardship. No one should get sick and die just because they are poor, or because they cannot access the health services they need.

World Health Organization

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