

The Concept of Human Rights Protecting Patients' Rights in Obtaining Health Services

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Health is one of the human rights that needs to be protected and receive serious attention from the Government. In the fifth precept of Pancasila, namely social justice for all Indonesians, clearly underlines that the Government must be able to ensure health services for its citizens fairly in gaining access to quality health. Many citizens complain of discrimination and injustice in its implementation. Citizens feel that their rights including health rights do not get sufficient attention from the Government, complaints about the quality of health services as low and the vulnerable position of patients, especially those who are poor or disabled mean that justice for citizens is far from expectations. This study examines the concept of human rights protection for the rights of patients in obtaining health services and aims to find out how the concept of human rights protection can create positive laws and the concept of human rights protection for patient rights in obtaining health services. The method used in this study is normative empirical, that is legal research which examines the phenomenon of the operation of law in the community, how the implementation of positive legal provisions in action that occur in the community relate to human rights and patient rights in obtaining health services. The research is descriptive. Secondary data is used consisting of primary and secondary legal materials. The research approach is qualitative using the socio-legal research method, and looks at the legal concept as well as the implementation of patient rights in obtaining health services in relation to social, cultural, economic and political dynamics. The results of the discussion show that health is a fundamental human right for every human being in order to be able to live properly, productively and improve his or her standard of living. Therefore, the Government must be responsible for meeting the health r needs of its citizens. Efforts to

obtain quality health services becomes a priority for all patients, especially the poor. The concept of human rights protection for patients' rights in obtaining health care health services, amongst them patients must include obtaining clear information about the health services they receive. Co-operation is also needed between patients, doctors and health workers to be able to create quality health services.

Keywords: *Human Rights Protection, Patient Rights, Health Services.*

Introduction

Human rights (HAM) belong to each human being. All humans have rights not because it is given to them by society or based on law, but solely based on human dignity. Human Rights are basic rights that are inherent since humans were born as a gift from God. These human rights are fundamental and universal. Law No. 39, 1999 concerning Human Rights in Article 1 provides a definition that human rights are a set of rights attached to the nature and existence of human beings as creatures of God and are a gift that must be respected, upheld and protected by the State, the Law and Government, and everyone must honour the protection of human dignity.

These human rights are not given, bought or even inherited, they are automatically obtained from the person's birth. Human rights apply to all people regardless of ethnicity, religion, gender, politics, cultural or social origin and nationality. Therefore, no one human can violate or limit the rights of others. People have human rights even though a country makes laws that may not protect human rights. Those rights include the right to life, freedom, the right to possess goods, the right to equality and freedom of thought, freedom of assembly, religious, economic or health service rights and the right to obtain human rights protection in obtaining health services.

Adequate health services are certainly required by everyone. The need to obtain health services is a basic right. In Indonesia, human right to health is stipulated by Article 28-H paragraph (1) of the 1945 Constitution of the Republic of Indonesia and its Amendment which states: "Every person has the right to live in prosperity physically and spiritually, live and obtain a physically and spiritually prosperous living environment, reside, and have a healthy living environment, and the right to obtain health services. This includes, all Indonesian citizens, including the poor and those who cannot afford the right to obtain health services.

The effort to achieve this goal has been initiated by the Government by organising several forms of social security in the health sector, including PT Askes (Pesero) and PT Jamsostek (Pesero) which serve as health services for civil servants, pension recipients, veterans and

private employees. The Government provides guarantees for the poor and disadvantaged through the Community Health Insurance Scheme (Jamkesmas) and Regional Health Insurance (Jamkesda). However, these schemes are still divided concerning a lack of balance in health costs and the quality of health services .

To overcome social security in the health sector, the Government has issued a Law of the Republic of Indonesia Number 40, 2004 concerning the National Social Security System (SJSN) as stated in Article 19 paragraph (1): "Health insurance is held nationally based on social insurance principles and principles *equity*. The principle of equity is similar to obtaining services in accordance with medical needs which are not bound by the amount of contributions that have been paid. At the same time, paragraph (2) states: "Health insurance is carried out with the aim of ensuring that participants receive health care and protection benefits in meeting basic health needs."

A form of Government responsibility in the implementation of health services, especially in terms of financing guarantees for the poor have been stipulated in Law Number 36, 2009 concerning Health in Article 20 paragraph (1) stating that "The Government is responsible for the implementation of health insurance for the community through the National Social Security System for individual health efforts. Subsequently, the Ministry of Health has implemented health care guarantees for the poor and disadvantaged through the Health Care Guarantee Program for the Poor (JPKMM) commonly known as the Askeskin program between 2005 and 2007, the JPKMM program later changing its name to the Community Health Insurance program (Jamkesmas) from 2008 to the present.

Between 2008 and 2013, the Jamkesmas program was managed by PT Askes Pesero. Since 1 January, 2014 in accordance with the mandate of Law Number 2, 2011 concerning the Social Security Administering Body, the management of the Jamkesmas program is handed over to the Social Security Organising Body (BPJS) Health and the Jamkesmas participants have changed their name to BPI Beneficiary BPJS participants from the Government. The Jamkesmas program aims to guarantee health services for the poor and disadvantaged, the implementation of which follows the principles of the national social security system, which uses the code of the social health insurance which is managed nationally based on the principles of not-for-profit, portability, transparency, efficiency and effectiveness.

In order to obtain good health services, people now have to incur substantial costs. This is certainly a burden to the community where currently many people have low income or no income at all. Some examples which highlight that low-income communities often do not receive good health services from hospitals, include a patient in a critical condition sometimes having to first complete various financial requirements and bureaucratic documents before being able to receive health services. Health services can be obtained by BPJS Health

participants through health facilities in hospitals, where hospitals according to Law No. 44, 2009 are institutions that provide health services individually for inpatient, outpatient and emergency services.

BPJS participants naturally have rights, including obtaining safe and quality services. So, if a participant experiences a loss due to the refusal of health services, then the he or she can claim the amount of compensation stipulated by Law No. 36, 2009 concerning Health Services. Based on the existing legal umbrella, it is fitting that hospitals have complete responsibility in ensuring the implementation of health care guarantees as part of the Government's responsibility in providing services and protecting public health in its function towards good governance.

Literature Review

a. Overview of the concept of human rights protection

The concept of Human Rights (HAM) can actually be traced theologically through human relations, as creatures with their Creators. There is no human being higher than other humans. There is only one absolute, namely God, its existence as *prima facie*, has consequences on the relativity of human knowledge. The concept of human rights shows that these rights come naturally from God, so that the law that is accepted by every human being that comes from or through revelation from God, so that its nature is eternal.

The concept of human rights provides an understanding that humans are dignified creatures who have an interest in living and socialising in society, therefore the human community must be able to solve the problems and conflicts it faces. According to Philipus M. Hadjon, the concept of Western human rights is basically a restriction on the state's actions and organs and the laying of state obligations on its citizens so that the principle contained in the concept of human rights is the claim (*claim*) of the right to the state and obligation that must be done by the State.

b. Right to Health

Health is a state of physical, mental and social well-being, not only the absence of illness or weakness. According to the Ottawa Charter, health is a resource for everyday life, not a purpose of life. It emphasises positive personal resources including social and physical abilities.

Health is a condition in which a person's condition is good in both body and soul and allows a person to obtain other rights that are internationally recognized. Without health, a person will not be able to obtain other rights. If someone is in an unhealthy state, his or her rights will automatically diminish, including the right to obtain decent work, the right to associate and gather and voice opinions, the right to education for the future and other rights. The importance

of health as a human right is a condition that is needed to fulfil other rights that have been recognised internationally.

Without a healthy life, human life becomes meaningless, because in a sick state, humans cannot complete their daily activities. In addition, people have to get help to cure their illness from health workers through health services.

c. Health services: Health is an effective function of self-care resources that guarantees an action for self-care.

Health is a behaviour that is in accordance with the goals needed to obtain, maintain and improve psychosocial and spiritual functions. According to Veronica Komalawati, the principles of applicable law and underlying health services include: the principle of legality, balance, timeliness, good faith, honesty, prudence and openness. On the other hand, according to Catherine Tay Swee Kian, it includes autonomous, generous principles and non-hurtful principles, principles of justice, loyalty and honesty.

d. Government Obligations.

The concept of a welfare state (*welfare state*) is a concept of a modern state, giving the government greater power to act. The government is obtaining a mandate to protect the rights of citizens and must be able to strive for the fulfilment of human rights including the right to health. The International Convention on economic, social and cultural rights states that the responsibility of the government is to provide protection, promotion, enforcement and fulfilment of human rights. The government not only maintains that a person does not violate his or her rights, but must also be able to seek fulfilment of these rights. Efforts to fulfil health rights can be undertaken in various ways, for instance through prevention and healing. The government has the task of organising health efforts which are fair, equitable and affordable by the community by providing optimal health services through qualified health workers with adequate infrastructure.

Methodology

This research is empirical and normative, consisting of legal research by observing the phenomenon of the work of law in the community, how to implement positive legal provisions in action on any particular legal event that occurs in the community related to public health rights services. By using purposive random sampling method, data was obtained using the W.A.L (Watching, Asking, Listening) technique.

The type of data used is the main data obtained from the community directly through interviews, observations, field surveys, questionnaires and other sources. Meanwhile, secondary data is obtained through legal literature, journals and other literature. The data

obtained from both literature studies and field research, will be analysed descriptively and qualitatively using a *socio-legal research approach*, which looks at the law in the formulation and implementation order in social, cultural, economic and political relations. This study attempts to examine and understand the concept of human rights protection for the rights of patients in obtaining health services.

Data is obtained from the results of field research and library research, then processed by undertaking a descriptive qualitative analysis. The method of analysis will be undertaken to find existing problems and obtain a solution to problems that exist in the community for the rights of patients in obtaining health services.

Results and Discussion

Health is one of the basic human needs besides food and shelter. Everyone wants a healthy life, because when someone is not healthy, everything becomes meaningless. An unhealthy person will not be complete daily activities properly. In addition, people who are sick must not be able to cure their own disease, they must get help from others including doctors and health workers..

As one of the basic human needs other than clothing, shelter, food and education, the right to health (*the right to health care*) and individual rights (*the right to self-determination*) must be realised in the form of providing safe, quality and affordable health services to the community. Therefore, every activity and effort to improve the level of public health must be carried out based on humanity, balance, protection, respect for rights and obligations, justice, gender, non-discrimination and religious norms (Article 2 of Law Number 36, 2009 concerning Health).

The guarantee of the right to health is also contained in Article 12 paragraph (1) of the International Convention on Economic, Social and Cultural Rights established by the UN General Assembly 2200 A (XXI) dated 16 December, 1966, more specifically that participating countries recognise the right of everyone to enjoy the highest standards that can be achieved in terms of physical and mental health. Protection of mothers and children also received attention especially in the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Discrimination against Women and Declaration on the Elimination of Hunger and Nutrition Deficiency.

The Jamkesmas program, which aims to provide health services, was originally intended for the health care insurance program for the poor and disadvantaged to run according to the rules by adopting a retrospective *fee for service* system as a way of paying health care fees on the basis of claims on the amount of costs incurred by the sick. With the increasing number of poor and needy people who need health services, the government is experiencing problems in funding the implementation of the Jamkesmas program. As a result, the Government changed

the payment method for health care fees to become a prospective payment method using the *casemix INA-CBGs* system. The application of the *casemix INA-CBGs* system as a government effort to control the cost of health services in hospitals is expected to improve efficiency in order to achieve equity and affordability. The casemix system is the basis for Indonesia *Case Based Groups (INA-CBGs)*, which is used as a payment method that promises to finance hospital patient claims. One of the objectives of the implementation of the casemix system is that hospitals work more effectively and efficiently, because the cost of health services including treatment has been determined in advance according to the diagnosis of the disease suffered by the patient.

Patient safety is the main thing for doctors in carrying out their duties (*solus aegroti salus suprema lex*), because it is a doctor's obligation to treat sick people, in accordance with *Hippocrates' Oath*, which is used as a basic guideline for doctors to date. Besides, it is the right of every person to obtain health services, as it is the duty of society through the medical profession to treat sick people, and treating sick people is "Fardhu Kifayah." Patient satisfaction with the quality of health services regarding care, friendliness and sincerity of health workers in addition to hospital facilities for both government and private hospitals is very important and always expected by patients.

To illustrate health services in other countries such as India and Thailand, the health services of various hospitals in Indian countries have very low standards. Hospitals in India have been operating creatively and swiftly in serving the needs of people who are mostly poor. Nearly 60% to 70% of health costs are borne by hospitals. Hospitals in India open service centres in big cities and small clinics in areas located on the outskirts or rural areas that will refer patients if they cannot be treated in hospital.

In contrast, health services in Thailand, are furnished with modern equipment. Success in health services is supported by political commitment, social movements, human resources and success in the use of information and communication technology in supporting service planning, monitoring and evaluation. The focus of the service is emphasized on the *primary care unit* as the *gatekeeper* for advanced services, where strengthening the health care system is prioritised in providing comprehensive primary services throughout the country.

We can compare Indonesian health services, from the above description of the two countries. Moreover, based on the results of the assessment of the health system in the Asean region, Indonesia is considered to have the worst health care system. Of course these assessments, must be able to make improvements to health services. Legal protection of human rights must be able to provide patient rights:

1. The right to prevent consumers from loss of property
2. The right to obtain goods / services at a fair price
3. The right to obtain appropriate solutions to problems

The rights and obligations of health BPJS patients are not different those of consumers in general. According to the declaration of human rights proclaimed by the United Nations on 10 December , 1948, the basic rights of consumers as first put forward by J.F Kennedy in front of the congress on 15 March, 1962 include the following rights:

1. The right to obtain security
2. The right to obtain information
3. The right to vote

To be able to fulfil the protection of patient rights in obtaining health services, it is necessary to develop a concept of quality health services, which is of course greatly influenced by several factors including the process, environment and social, cultural and political aspects. These factors must be able to change the health service strategy to be more qualified with human resources and a better service management system. Patients must obtain rights in health services:

1. The right to obtain clear information about the health services that will be received
2. The financing rights that will be received and borne by the patient
3. The right to obtain clear information about the disease, the actions that will be undertaken, the side effects of the health service actions and the right to refuse the actions of health services that are not appropriate
4. The right to hear the patient's opinion on health services
5. The right to get advocacy, protection and dispute resolution efforts
6. The right to obtain compensation if there is a default in the health service and the right to create a civil or criminal lawsuit if the patient has a disability.

Justice must be achieved by doctors in providing health services to patients. Doctors and health workers should not treat patients differently based on the patient's socio-economic status . The active role of patients in improving the quality of clinical services is expected, therefore effective co-operation is needed between patients, doctors and health workers. Quality health services will enable the development of private hospitals in improve the quality of government hospitals.



Implication

The concept of the protection of human rights in positive law is already stated in Law No. 39, 1999 including the need for harmony with democratic values and justice. To obtain the protection of patient rights in developing health services, it is necessary to develop a concept to create quality health services through a clear information system that is needed by patients regarding their illnesses with a guarantee of safety and comfort, so patients can protect their human rights by compensating, advocating and resolving both civil and criminal disputes. The active role of patients is needed in collaborating with doctors or health workers to achieve effective health care rights. The establishment of an Agency/Institution that provides legal protection for human rights, especially the right to health is expected. Education is required for the community through verbal and visual dissemination of information to obtain effective health services and provide an understanding of how to file a lawsuit against errors in health services through both civil and criminal complaints.



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