

The Aspects of Indonesia's Positive Law in Health Services

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Abstract. The guidance and development of law in the health sector aim to create order and legal certainty and facilitate development in the health sector. The desired laws and regulations are of course regulations that can guarantee and protect the community in obtaining the expected health services and can protect health workers. It must have legal aspects that are thorough and solid so that it can regulate health services carried out both by the government and by the private sector. In Indonesia, legal aspects in the health sector have been implemented with the various sectoral laws issues. For example, among others Law No. 23 of 1992 which was replaced by Law No. 36 of 2009 concerning Health, Law No. 25 of 2009 concerning Public Services, Law No. 44 of 2009 concerning Hospitals, Law No. 29 of 2004 concerning Medical Practice, Law No. 18 of 2014 concerning Mental Health, Law No. 9 of 2014 concerning Clinics, and Law No. 38 of 2014 concerning Nursing.

Keywords: Aspect; Positive Law; Health services; Indonesia.

1. Introduction

Contributing to the establishment of a global order based on freedom, eternal peace, and social justice, promoting public welfare, and safeguarding the entire Indonesian nation from bloodshed are among the Indonesian state's national objectives. The Indonesian nation engages in national development in order to accomplish objectives in social, national, and state life. The primary objective of national development is to improve people's overall well-being. To promote the general welfare, the health aspect is one of the main aspects that is used as the main focus in national development efforts.

The Republic of Indonesia's Unitary State is a constitutional state. Everything related to the implementation of government related to the goals of people's lives must be under the law. This includes efforts to safeguard citizens' human rights. Health, which is a human right, is one aspect of welfare that must be realized in accordance with Indonesian values. One of a person's most essential needs is health, along with clothing, food, and a place to call home. Understanding health ethics is crucial to people's welfare today, given the growth of health services. According to the Constitution, everyone has the right to a home, a healthy environment, and access to health care. They also have the right to live in spiritual and physical prosperity. The state is then in charge of providing adequate public service and health care facilities.

Sustainable development efforts, which are a series of developments that are comprehensively directed and integrated, are carried out to achieve national goals. This includes

the development of health in general and the provision of health services in particular. In Indonesia, legal aspects in the health sector have been implemented with the issuance of various sectoral laws. For example, among others Law No. 23 of 1992 which was replaced by Law No. 36 of 2009 concerning Health, Law No. 25 of 2009 concerning Public Services, Law No. 44 of 2009 concerning Hospitals, Law No. 29 of 2004 concerning Medical Practice, Law 18 of 2014 concerning Health Life, Law No. 9 of 2014 concerning Clinics, and Law No. 38 of 2014 concerning Nursing.

Nowadays, it can be seen that all areas of people's lives have been touched by legal aspects. This is because basically, humans have the desire to live regularly. However, regularity for someone is not necessarily the same as a regularity for others. Thus, rules are needed that regulate human relations through harmony between order and the legal basis.

Guidance and development of law in the health sector aim to create order and legal certainty and facilitate development in the health sector. The desired laws and regulations are of course regulations that can guarantee and protect the public in obtaining the expected health services and can protect health workers. In order for the regulation to be able to regulate health services provided by both the government and the private sector, it needs to have comprehensive and solid legal aspects. Every Indonesian citizen has equal standing before the law—equality before the law—without exception, as stated in Article 27 paragraph 1 of the 1945 Republic of Indonesia Constitution, which is the highest law and also serves as the highest reference in state life. In addition, the Republic of Indonesia's 1945 Constitution regulates fair treatment from the government and legal system as well as social welfare, such as health services.[1]

Legislation is one form of law, and while the law itself contains a broader meaning than that form, even though everything has been arranged to meet good statutory standards in practice, there are still

various deficiencies so that adequate understanding is needed. [2] The arrangement of criminal and civil laws is necessary for an effort to protect society. The essence of criminal provisions is to ask for accountability through criminal charges for things that have been determined beforehand.[3]

The problem in this paper is How are the Legal Aspects in the Field of Health Services According to Indonesian Positive Law.

2. Method and Approach

This applied paper was written using an analytical and descriptive approach. This means that the data used to write the paper clearly describes the problems directly in the field, then the analysis is done and a conclusion is made to solve a problem. methods of observation and literature review for data collection in order to solve problems and prepare this paper.

The approach taken is sociological juridical, or the juridical approach, which is a way to look at problems from a legal and systematic perspective and as a set of rules that can be used to analyze legal phenomena that arise. The sociological approach is used to investigate a problem in society or the community with the intention of gathering facts, then locating, identifying, and solving problems.

3. Findings and Discussion

3.1 Legal Aspects in the Field of Health Services According to Indonesian Positive Law

The world of science has long pioneered a new discipline, namely "Medical Law", or "Medical Law" as a translation of "Medical Law", or some also call it "Health Law" or "Health Law" or "*Gezondheidsrecht*". Medical law or medical law in several countries has developed in line with the development of human civilization. However, the orientation of its development departs from a different starting point in viewing the intent and purpose of law in solving problems that arise.[4]

Medical law has the following scope:[5]

- a. Laws and regulations that directly and indirectly regulate problems in the medical field, for example: UUPK
- b. Appropriate application of administrative law, civil law and criminal law provisions for this matter.
- c. Well habits and continuously followed in the field of medicine, international agreements, as well as developments in science and technology that are applied in medical practice, become a source of law in the field of medicine
- d. In the medical field, the judge's decision, which has permanent legal force, becomes a source of law.

In civil and criminal procedural law, it is known: as written evidence, starting from this matter, so far medical records as notes made by doctors (and dentists) are considered to be able to be used as written evidence, although in subsequent developments, opinions it may still be reviewed. The medical record is not evidence according to law, although it can be used as an evidence guide as long as it is carried out correctly following applicable regulations.[6] The principle of patient protection is the doctor's obligation to keep patient secrets that are known either directly or indirectly. The matter of medical secrets has been regulated in Government Regulation No. 10/1966, long before UUPK was promulgated.[7]

There are several legal aspects of health services in Indonesia. Civil aspects include claims for compensation based on unlawful acts (*onrechtmatige daad*) and criminal aspects.[8] Health services in Indonesia are comprehensive because they are structured by several legal aspects. Legal aspects related to health services, among others:

Aspects of Constitutional Law

Sustainable development efforts are made to achieve national objectives, specifically a series of developments that are all-encompassingly directed and integrated. This includes developing health in general and providing health services in particular. Guidance and development of law in the health sector aim to create order and legal certainty and facilitate development in the health sector. The guidance and development of law in Indonesia are carried out through statutory regulations. The desired laws and regulations are of course regulations that can guarantee and protect the public in obtaining health services.

The development of health services is comprehensive and structural. This is done through legal instruments following the method of formation, type and order of statutory rules. The first paragraph of Article I of Law No. The stages of planning, drafting, discussing, validating or stipulating, and enactment comprise the making of a law, according to Law No. 12 of 2011 Concerning the Formation of Legislation.

Article 7 of Law No.12 of 2011 concerning Formation of Legislative Regulations states that the hierarchy of statutory regulations includes:

- a. The 1945 Constitution of the Republic of Indonesia;

- b. Decree of the People's Consultative Assembly;
- c. Laws/Government Regulations In lieu of Laws;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regulation; And
- g. District/City Regional Regulations.

Article 8 of Law No.12 of 2011 concerning the establishment of laws and regulations states that:

"Types of Legislation other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Board, the Judicial Commission, Bank Indonesia, Ministers, institutions or commissions of the same level established by law or by the government by order of law, Provincial Regional People's Legislative Council, Governor, Regency/City Regional People's Legislative Council, Regent/Mayor, Village Head or equivalent."

For example, health services in Indonesia are regulated in According to paragraph 1 of article 28H, "everyone has the right to live in physical and spiritual prosperity," "everyone has the right to receive health services," "to have a place to live," and "to get a good and healthy environment." The state is then obligated to provide adequate public service facilities and health care facilities, as stated in Article 34 paragraph 3.

Aspects of Environmental Law

The legal aspects of the environment in health services, especially for the administration of health in hospitals can be seen in article 8 of Law No. 44 of 2009 concerning hospitals which reads:

- (1) Article 7 paragraph 1's location requirements must adhere to health, environmental safety, and spatial planning regulations as well as the findings of the study on the requirements and feasibility of running a hospital.
- (2) Statutory regulations govern environmental health and safety measures such as those outlined in paragraph (1) for environmental monitoring, environmental management, and/or environmental impact analysis.

Article 8 paragraph (2) above refers to Law No. 32 of 2009 concerning environmental protection and management. In article 1 number 11 it is stated that: "An Analysis of Environmental Impacts (AMDAL) is a study of the significant impacts of a planned business and/or activity on the environment which is necessary for the decision-making process regarding the implementation of a business and/or activity."

Aspects of Administrative Law

Several sectoral laws cover administrative legal aspects of health services. Law No. 23 paragraph 3 says that Health workers must have a permit from the government in order to provide health services, according to Law No. 36 of 2009 on Health. The same law also says that organizers of health service facilities can't hire health workers who don't have the right credentials and permission to work in a professional capacity. Health services are also covered by the license.

tradition as referred to in Article 60 paragraph (1) of Law No. 36 2009 concerning Health.

Health care providers and healthcare facilities that are believed to be in violation of the provisions of Law No. 36 of 2009 concerning wellbeing. Article 188 paragraph 3 specifies these administrative sanctions in the form of written warnings, the revocation of temporary permits, and/or permanent permits. In accordance with Article 201, paragraph (2) of Law No. 1, corporations will have their legal entity status revoked in addition to their business licenses. 36 of 2009 that dealt with health.

Law No. 36 lists aspects of administrative law relevant to medical practice. concerning Medical Practice, Law No. 29 of 2004. According to the article, every dentist and doctor in Indonesia must hold a license to practice medicine. Law No. 19's Article According to Section 38 of the Nursing Act of 2014, licensed nurses are required to practice nursing. A SIPP, also known as a nurse practice license, is used to grant this permit. Law No. 58's article 58 lists the same administrative penalties. concerning nursing in the form of written or verbal warnings, administrative fines, license revocation, or both.

The administrative and legal aspects of hospital-provided health services are listed in paragraph (1) of article 13 of Law No. According to Public Law No. 44 of 2009, pertaining to Hospitals, physicians who practice medicine in hospitals are required to have a Practice Permit. The hospital license itself is governed by the provisions of Article 25 of Law No. According to Section 44 of the Hospitals Act of 2009, every hospital administrator must possess both an operational and an establishment permit.

Civil Law Aspects

A therapeutic transaction between health care workers and patients demonstrates aspects of civil law in health services. A transaction (agreement or *verbintenis*) by a doctor to select the most effective therapy for a patient is referred to as a therapeutic transaction.[4] The Civil Code (*Het Burgerlijk Wetboek*), hereinafter referred to as the Civil Code, governs transactions in general. In order for a transaction to be legal, it must fulfill four (four) conditions in Article 1320 of the Civil Code, namely:

- (1) The agreement of those who bind themselves (*toesteming van degene die zich verbinden*);
- (2) The capacity to enter into an engagement (the capacity to enter into an engagement);
- (3) Regarding a certain matter (*een bepaald onderwerp*);
- (4) Due to a lawful cause (*een geoorloofde oorzaak*)

In this therapeutic transaction, both parties must fulfill the aforementioned conditions, and once the transaction has taken place, both parties are obligated to fulfill their rights and responsibilities. As stated in Civil Code article 1338, which reads:

"All agreements made legally apply as laws to those who make them. An agreement cannot be withdrawn other than by agreement of both parties, or for reasons stated by law as sufficient for that. An agreement must be implemented with good intention."

Legal Aspects of Discipline

Law No. 55, paragraph 1, addresses the disciplinary legal aspect concerning Medical Practice, Law No. 29 of 2004. The Indonesian Clinical Discipline Privileged Committee was laid out to maintain the discipline of specialists and dental specialists in clinical practice. Then, in accordance with paragraph 3 of Article 69, doctors and dentists who violate the Indonesian medical code of ethics (KODEKI)'s discipline of the medical profession will face disciplinary sanctions in the form of:

- b. Giving a written warning;
- c. Recommendation for revocation of registration certificate or practice license;
- d. Obligation to attend education or training at educational institutions of medicine or dentistry.

The purpose of disciplinary punishment imposed on health workers who make mistakes is to improve and educate the health workers concerned. Therefore, if disciplinary punishment in the field of health services is applied to health workers, a deep sense of responsibility will automatically encourage them to carry out professional obligations and comply with applicable legal provisions.[9]

Aspects of Criminal Law

Based on Article 7 of Law No. 1, the Criminal Code (Wetboek van Strafrecht), which is referred to as the Criminal Code in this document, applies to all Indonesian citizens without exception. 1 of 1946, which dealt with regulations for the criminal law. From Article 1 to Article 9, the Criminal Code outlines the fundamentals of criminal law. Doctors who are residents and citizens of the Republic of Indonesia are subject to the Criminal Code's provisions, especially if they are members of the medical profession's subsystem, which is one of Indonesian society's subsystems and its suprasystem.

Since criminal law is a part of public law, the public's and community's interest is the primary focus here. Simons says that a crime is a human act that is against the law, punishable by crime, and committed by someone who is capable of being responsible.[10] The element of error (*schuld*) in the sense of a crime above is an act which:

- a. Contrary to the law (*wedderrechtelijk*);
- b. As a result, one can imagine/there are predictors (*voorzienbaarheid*);
- c. As a result, it can actually be avoided/there is caution (*overmijdbaarheid*);
- d. Be accountable/blamed to him (*verwijtbaarheid*).

According to Leenen, a medical action materially does not conflict with the law (*ontbreken van de materiele wederrechtelijkheid*) if the following conditions are met:[11]

- a. The action has medical indications/instructions based on a concrete medical action/treatment objective;
- b. The procedure is carried out in accordance with treatment guidelines;
- c. The action was carried out with the consent / permission of the person concerned (patient).

There are important differences between ordinary crimes and medical crimes, namely:[11]

- a. In ordinary crimes, the focus is mainly on the consequences (*gevolg*), while in medical crimes, what matters is not the consequences, but the causes or causes.

- Even though the consequences were fatal, there was no element of error whether it was intentional or negligent, so the doctor cannot be blamed;
- b. Because it is typically obvious, it is possible to draw a clear line between cause and effect in typical crimes.

4. Conclusion

In order to achieve national objectives, sustainable development efforts, which are a series of comprehensive, directed, and integrated development initiatives, are carried out. This includes health development in general and providing health services in particular. There are several legal aspects of health services in Indonesia. Those are comprehensive and structural because structured by several legal aspects. Legal aspects related to health services among others: a. Aspects of constitutional law; b. Aspects of environmental law; c. Aspects of administrative law; d. Civil law aspects; e. Legal aspects of the discipline, and; f. Aspects of criminal law.

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