

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Analysis Of The Construction Of Legal Protection Regulations For The Health Profession In Private Hospitals In Indonesia: A Values-Based Approach Regarding To Pancasila Justice

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Abstract. *Hospitals across Indonesia will reach 3,155 units by 2023, both government-owned and private, comprising 2,636 public hospitals and 519 specialized hospitals. Health services in private hospitals in Indonesia have already provided a good and growing service, but when faced with the latest Law No. 17 Year 2023 on the Health Act, it became controversial because in Article 440 Paragraphs 1 and 2 that the medical or health personnel who perform sleeping can be punishable, so from this article, the health or medical personnel get discrimination or injustice. The objective of this study is to analyze and find the constructions of regulations for the protection of the law of health professions in private hospitals in Indonesia: a values-based approach based on Pancasila Justice, a method of research using a normative Yuridis approach. The results of this research found that in order to provide legal certainty, it is necessary to reconstruct the regulations for the protection of the law of health professions in the private hospital in Indonesia. Because of the losses incurred by the negligence carried out by the health personnel, the hospital must provide protection and reference to articles 2 and 5 of the Pancasila, as well as see Article 308 Paragraphs 6 the latest Law No. 17 Year 2023 Act on Health by adding a clause “to judgment and based on the outcome of the trial of the Organization of Ethics of Professions. So that healthcare is given a fair and humane space, the legal protection of healthcare professions in private hospitals is realized.*

Keywords: *Analysis Of The Construction; Health Professionals; Private Hospital; Values of Justice Pancasila.*

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1. Introduction

In Pancasila and the 1945 Constitution, health is a human right and one of the elements of welfare that must be realized in accordance with Indonesia's national ideals and goals and the awakening of awareness of human rights¹. Human rights awareness is also part of the realization of the establishment of health services that are affordable for the community at various levels, clinics and health centers, type D hospitals to type A hospitals that have human resources, health facilities and infrastructure ranging from standard to the latest technology. Health services and hospitals are health institutions that offer inpatient, outpatient and emergency services². A patient is any individual who visits a hospital to obtain the necessary health services, either directly or indirectly³. Hospitals use various elements to provide health services, such as infrastructure, medical devices, medicines, health workers, and others.

In line with the mandate of Article 28 H paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 it has been affirmed that everyone has the right to obtain health services, then in Article 34 paragraph (3) it is stated that the State is responsible for the provision of health service facilities and proper public service facilities. Hospitals as one of the health service facilities are part of health resources that are indispensable in supporting the implementation of health efforts. The implementation of health services in hospitals has very complex characteristics and organizations.

Hospitals throughout Indonesia until 2023 will reach 3,155 units. Both government-owned and private hospitals⁴. According to the Indonesian Central Bureau of Statistics 2024, the number consists of 2,636 general hospitals and 519 special hospitals⁵. General hospitals are hospitals

¹ Nomensen Sinamo. 2019. *Health Law & Medical Disputes*, Mesh Gem Literacy. Jakarta, p. 1.

² Rhaina Al Yasin, et al. 2022. *The effect of service quality on outpatient satisfaction in hospitals: literature review*. Journal of Digital Business: Journal of Management Science and E-Commerce Publications. Vol.1, No.4 December, p.2.

³ Erindah Dimisyqiyan dkk. 2020. *Analisis Bibliometrik dan Pemetaan Sistem Registrasi On Line di Rumah Sakit* *Bibliometric Analysis and Mapping of On-Line Registration System in Hospital*, *The International Journal Of Applied Busines*. TIJAB, Volume 4 Number 1, p. 23.

⁴ Nadiva Dzikriyati, dkk. 2023. *Evaluasi Pelaksanaan Green Hospital: Kajian Sistematis*. Environmental Occupational Health and Safety Journal • Vol.4 No.1. p. 36.

⁵ Danur Pristandaru emblem. 2024. *The Number of Hospitals in Indonesia Increases, but Still Uneven*, <https://lestari.kompas.com/read/2024/03/18/140000686/jumlah-rumah-sakit-di-indonesia-meningkat-tapi-masih-belum-merata>.

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that provide health services in all fields and types of diseases, while special hospitals are hospitals that provide services in one field and type of disease.

Legal responsibility to hospitals in the provision of health services cannot be carried out optimally. This can be seen from the quality of service in the Hospital Emergency Department which cannot run optimally. The Hospital Emergency Department is the front or spearhead of the hospital in providing health services, so that the good or bad quality of service in the Hospital Emergency Department can be a mirror of the quality of hospital services.

The legal responsibilities of hospitals often cannot be fully carried out because of the strong pattern of paternalistic relationships between providers and recipients of health services. This pattern of paternalistic relationships portrays doctors as superiors, and patients as subordinates. Patients are not aware of their rights, including the right to information, so doctors often perform medical procedures without providing sufficient information to patients⁶. The case of the disappearance of a baby in a hospital in Bandung in 1987, the case of the exchange of O₂ Gas with CO₂ Gas during surgery at a hospital in Bengkulu in 2001, the case of baby D who died because he did not get adequate treatment from the Emergency Department of a West Jakarta Hospital in 2017.

The case of Dr. Setyaningrum Pati, blamed for neglecting to inject Streptomycin patients in shock and died, by the Pati District Court in prison sentence of 3 month and probation period of 10 month, upheld by the high court, the hearing was presented by expert witnesses from Kariadi Hospital how to handle anaphylactic shock according to RSDK procedures. at the cassation level Dr. Setyaningrum was released because anaphylactic treatment by injecting adrenaline, delladriol and hydrocortisone was considered correct at the level of public health services and doctors who only had 4 years of experience. Expert witnesses from RSDK are considered unequal for DR's services at the public health center. The expert witness should be a doctor who has the same flight hours at the public health center.

Efforts made by organizations to provide the best service to both public and private hospitals through professional organizations, there are the Indonesian Doctors Association, the Indonesian Dentists Association, the Indonesian National Nurses Association, the Indonesian Pharmacists Association, and the Indonesian Midwives Association. By protesting against the

⁶ <https://law.ui.ac.id/tanggung-jawab-hukum-rumah-sakit-di-indonesia-oleh-wahyu-andrianto-s-h-m-h/>

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emergence of the Health Omnibus law, Law No. 17 of 2023 concerning Health, is a big step so that medical / health workers and the public get justice and Legal Protection⁷.

From the case problems and efforts made by both hospitals and Health Professional Organizations above, this study peaks the title *"Analysis of the Construction of Regulations on Legal Protection of Health Personnel Professions in Private Hospitals in Indonesia: A Value-Based Approach Regarding to Pancasila Justice"*.

Problem Statement

How is the Construction of Legal Protection Regulations for Health Workers in Private Hospitals in Indonesia based on the Value of Pancasila Justice?

Objective of the Study

This study is to analyze and find the reconstruction of legal protection regulations for the Health Worker Profession in Private Hospitals in Indonesi

2. Research Methods

The study was a normative juridical approach⁸ using a statutory approach and a conceptual approach. Normative juridical research is the research utilized in this study. The definition of normative juridical research is research that uses secondary data related to the subject of research then the data that has been collected is studied to find existing relationships to solve existing problems ⁹. This study, later on, uses primary legal materials and secondary legal materials obtained by collecting legal materials using literature study (*library research*).

⁷ <https://www.nu.or.id/nasional/sejumlah-pasal-kontroversial-dalam-uu-kesehatan-yang-disahkan-dpr-4N9tE>

⁸ Ade Ismail Ananda. 2020. *Law Enforcement In Children Judicial System Based On The Restorative Justice System .The 2th Proceeding International Conference And Call Paper "Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch"* Sultan Agung Islamic University. UNISSULA PRESS, p.223.

⁹ Wiratmadinata. 2022. *Theoretical Construction of the Formation of the State Theory of Pancasila Law (NHP)*. Ocean Law Journal of Justice, Volume 17, Number 1, p . 42.

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3. Results and Discussion

3.1. Pancasila Justice Theory as an implementation of legal protection and principles of justice for health workers.

Pancasila has a character or nature that is flexible and able to provide the demands of the times in following the globalization of changing times. Justice is an essential moral principle for maintaining human dignity. Pancasila contains values that can change this nation. These values can build the foundation for justice for the Indonesian state. If Pancasila is related to justice, its values can serve as a basic foundation for building humane, just, and civilized laws and social justice for all Indonesian people.

Just and civilized humanity is the basis of the protection of human rights, namely humanizing human beings in a civilized manner without prejudice to their rights in the slightest. While social justice is justice used to distinguish social justice from the concept of justice in law. Social justice is also one of the precepts in Pancasila, namely the fifth precept of Pancasila formulated in the Preamble to the 1945 Constitution in the fourth paragraph. In the second precept and fifth precept, the values of the State's goal to create justice in the context of common life are stated. The meaning of the second precept and the fifth precept contains the meaning of justice in the form of values, of course, it must be realized in social life, namely justice in man's relationship with himself, man's relationship with others, man's relationship with his nation and country then the last is man's relationship with his God ¹⁰.

The regulation on the protection of health workers in private hospitals in Indonesia through a new regulation, namely Law No. 17 of 2023 concerning health, affects hospital services, both in terms of justice and legal protection. Related organizations, both medical personnel organizations and health worker organizations, are worried if later in article 308 paragraph 6 providing space for medical personnel and health workers are easily criminalized even though the institution has sheltered its members in terms of providing the best service to the community in hospitals.

¹⁰ Yudha Purnawan Sudijanto, Anis Masdurohatusun, Sri Endah Wahyuningsip. 2023. *Rekonstruksi Regulasi Penegakan Hukum Terhadap Tindak Pidana Yang Dilakukan Oleh Anak Berbasis Nilai Keadilan Pancasila*. Disertasi Program Doktor Ilmu Hukum Unissula. Semarang, p. 32-33.

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To provide a sense of justice and legal protection as well as legal certainty and achieve national goals that are aspired to as after-hospital services, especially in the field of excellent health services, the need for justice Pancasila as a house of law as the position and position of Pancasila in the context of *Grundnorm* (Basic Norms) in the sense of Hans Kelsen or *Staatsfundamentalnorms* (fundamental norms of the State) in the understanding of Hans Nawiasky¹¹, the verse of the Pancasila verse can appropriately be used as a guide for philosophical and practical reference.

3.2. Construction of Legal Protection Regulations for Health Workers in Private Hospitals in Indonesia

Private hospitals are part of the enforcement and ideals of our national law. The laws and regulations that are used as the basis for the implementation of hospitals, namely Law No. 44 of 2009 concerning Hospitals, are replaced by Law No. 17 of 2023 concerning Health. In this health law, it has not provided a sense of justice to medical personnel and health workers through private hospitals, therefore it is necessary to reconstruct the norms in article 308 paragraph 6 of Law No. 17 of 2023 by adding the phrase "based on the type of health service" so that health services carried out by professionals, both medical personnel and health workers get legal certainty, legal protection and justice. The classification of general hospitals is divided into based on facilities and service capabilities, namely: Class A General Hospital, Class B General Hospital, Class C General Hospital, Class D General Hospital, this type of hospital is determined based on services, Human Resources, equipment, facilities and infrastructure, as well as administration and management.

4. Conclusion

Based on the analysis and discussion above, it can be concluded that; In article 308 paragraph (6) which reads "Recommendations as referred to in paragraph (4) in the form of recommendations for the implementation of professional practices carried out by medical and health personnel in accordance or not in accordance with professional standards, service standards, and standard operational procedures". The above article has not attached the phrase "has been determined by professional organizations in the health sector" so that there needs to be an interpretation not in accordance with professional standards, service standards, and standard operational procedures that are fair to Pancasila because the phrase

¹¹ Wiratmadinata. Op. cit, p. 48-49.

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feels biased for various levels and types of health services in Indonesia. To provide a sense of fairness and definite legal protection, it was reconstructed as follows:

In article 308 paragraph 6 which reads; "The recommendations referred to in paragraph (4) are in the form of recommendations for the implementation of professional practices carried out by medical and health personnel in accordance with or not in accordance with professional standards, service standards, and standard operational procedures ***based on the type of health service.***"

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