

HEALTH LAW IMPLEMENTATION REALIZES GENDER EQUALITY AND WOMEN'S EMPOWERMENT

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Abstract

The millennium development program (MDGs) in quality health services, including women's reproductive health, is not evenly distributed, due to poor infrastructure and the unequal quality of health services between provinces. It is hoped that Indonesian Health has succeeded in achieving most of Indonesia's MDGs targets, namely 49 of the 67 MDGs indicators can be improved. In normative juridical research, law is conceptualized as norms or rules that apply in society. Using a statutory approach and a conceptual approach in health law. There is a guarantee of a sense of security in accordance with Article 28G Paragraph (1) of the 1945 Constitution, thereby providing women's rights in accordance with the mandate given by the state and guaranteeing rights without discrimination and gender differences. There is the Convention on the Elimination of All Forms of Discrimination against Women, which emphasizes that women's human rights are respected, then women's reproductive health rights have also been formulated by the International Planned Parenthood Federation (IPPF) since 1996, namely the right to equality and freedom from all forms of discrimination. In the end, support for women's empowerment must involve many parties from politics, PUG institutions, Human Resources, Budget, Gender Analysis Tools, and Community Participation.

Keywords: gender equality, health law, reproductive health rights

1. Introduction

1.1. Background

Medical Law or Medical Law is already known in several developed countries, and its development is in line with the development of human civilization. Medical law as the core of health law is understood as regulations in society, relating to the rights and obligations of patients, in receiving health services through health workers. In terms of terminology, the term Health Law is often equated with Medical Law, being one of the courses in Law study programs in Indonesia which generally only focuses on matters directly related to the world of medicine and discusses more matters related to Medical Law or Medical Law. Even though the scope of discussion of Health Law is broader than Medical Law (Takdir 2018).

C.S.T. Kansil, defines Health Law as a set of laws and regulations in the health sector that regulate medical services and medical facilities. Starting from services at the basic facility level to services at referral or integrated facilities. Patients will be served when seeking treatment and receive treatment according to their disease complaints, treatment is given until the patient achieves improvement or is healthy again. Healthy in question is a condition that includes physical, mental and social health, free from defects, weaknesses and other diseases (Kansil 1991).

The implementation of health law through Law number 36 of 2009 which has been updated with Law number 17 of 2023 concerning health provides guarantees for the community, namely the fulfillment of basic health rights for women and their reproductive rights, which are realized in harmony and in line with the ideals of the Indonesian nation. as stated in Pancasila and the Preamble to the 1945 Constitution. Regarding the right to a sense of security, it is guaranteed in Article 28G Paragraph (1) of the 1945 Constitution. Fulfillment of women's rights in accordance with the mandate given by the state will guarantee rights without discrimination and gender differences.

Equality of rights without gender discrimination in women's daily lives has not actually been fully realized, for example in choosing to take part in a family planning program, it is still found that women do not have the right to decide for themselves, often influenced by other parties, such as the attitude of their husband or in-laws. This intervention came as a result of the influence of customs and culture which habitually prioritize men over women. On the other hand, the state hopes that a strong, high-quality generation will be born from a woman.

The birth of a strong, high-quality generation has been prepared in line with the ongoing national long-term program and the Millennium Development Goals (MDGs) movement in Indonesia. Indonesia's health has succeeded in achieving most of Indonesia's MDGs targets, namely 49 of the 67 MDGs indicators, however there are still several

indicators that must be met. M. Zainul Majdi revealed three indicators to measure and assess the progress of a nation, namely income, education and health (Muchtari 2016).

1.2. Research Question

How can the implementation of health laws encourage the realization of gender equality and women's empowerment?

1.3. Purpose and objective

The aim of this research is to provide knowledge about the application of health law, especially for Indonesian women regarding their reproductive health rights. Reproductive health rights are basic rights that cannot be reduced or interfered with. The hope is that women will be able to determine their own reproductive health rights without discrimination, then gender equality will be realized and women will be empowered in all aspects of life.

2. Literature Review

2.1. Pancasila Rule of Law Theory

Indonesia is a country of law, which means that the law must be upheld and implemented. Every activity in this country must be based on law and every citizen must obey the law. The state is present in various forms of problems in society, with the authority of the state to regulate and be sovereign. Any regulation regarding the lives of individuals independently or in groups cannot be separated from the existence of a state as a legislative authority. Socrates said that the task of the state is to educate citizens in the virtues of promoting the happiness of citizens and making their souls as good as possible. Apart from that, Thomas Aquinas said that the state is tasked with perfecting legal order, the state must provide general welfare for all its citizens.

General prosperity for all citizens is our common goal, realized by building an Indonesian state founded on Pancasila. The pillars of Pancasila always influence the legal system in Indonesia. Pancasila in the legal system has a top place, has a special position, overarching the life of the nation. Pancasila values must be used as the main and basic basis for administering the Indonesian state. Pancasila as a state ideology and philosophy must be realized in real life in everyday life. Pancasila was appointed as a pillar of the Indonesian nation because it was considered appropriate to the conditions of the Indonesian nation-state which was pluralistic and quite broad and large.

L.J. Van Apeldoorn said that law can be seen from 2 (two) different points of view, namely: first from the perspective of *ontwikkelde leek*, namely people who are educated in a certain field of science but do not have education in the field of law, for example a doctor, this group sees law as a series of letters, his view recognizes that law is not the same as law, because apart from law, there are other important sources of law such as customs, treaties, jurisprudence and doctrine

Then secondly, from the perspective of the man in the street, namely the average person, this group sees the law in reality. This view sees legal events only in court, assessing them only one-sidedly. Even though the form of law exists in everyday life through many legal events, without involving the court, for example birth, death, making agreements, giving gifts and so on (Apeldoorn 2001).

2.2. Health Law Theory

The right to health as an indicator of a country's progress is guaranteed in the 1945 NRI Constitution Article 28 H paragraph (1) ¹. The definition of reproductive health is essentially stated in Article 71 of Law No. 36 of 2009 concerning Health which states that reproductive health is a state of complete physical, mental and social health, not merely free from disease or disability related to the reproductive health system. reproduction. This means that everyone has the right to have children, including the right not to have children, the right to get pregnant, the right not to get pregnant, and the right to determine the number of children they want (Siregar 2023).

Reproductive health rights are explained in Law number 17 of 2023 concerning health in article 59 which states that women's reproductive health includes: a. reproductive system health according to the life cycle; b. Pregnancy management and contraception services; c. Assisted reproduction; d. Sexual health including prevention and treatment of sexual violence; and abortion services for indications (article 62).

Women's reproductive health rights were formulated by the International Planned Parenthood Federation (IPPF) in 1996, namely: 1) the right to life; 2) the right to liberty and security; 3) the right to equality and freedom from all forms of discrimination; 4) the right to personal privacy; 5) the right to freedom of thought; 6) the right to obtain information and education; 7) the right to marry or not to marry and to form and plan a family; 8) the right to decide whether to have children or not and when; 9) the right to health services and protection; 10) the right to benefit from scientific progress; 11) the right to freedom of assembly and political participation; and 12) the right to be free from persecution and ill-treatment.

So by knowing and understanding women's sexual and reproductive rights, we can protect, fight for and defend women's sexual and reproductive rights from various acts of violence and attacks on sexual and reproductive rights, as well as avoid discrimination and these reproductive rights can be implemented in 8 family functions (BKKBN 2021).

2.3. Millenium Development Goals (MDGs) in Indonesia

¹ UUD 1945 Pasal 28 H ayat (1): bahwa setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan dan negara wajib untuk menyediakannya

The government has opened itself to the values of gender equality, as evidenced by the existence of Law Number 7 of 1984 concerning Ratification of the Convention concerning the Elimination of All Forms of Discrimination Against Women. The definition of gender equality refers to a condition of equality between men and women in fulfilling their rights and obligations. Discrimination based on gender still occurs in all aspects of life, throughout the world, even though women play a very large role in world development.

The principle of gender equality means that women's rights are human rights. All humans are born free, have the same honor, dignity and rights, both men and women. Gender equality will strengthen countries' ability to develop, reduce poverty, and govern effectively. Equality is when individuals and other individuals have the same status in society. Equality must be realized in various areas of social life, such as: Politics, is a situation when members of society are in an equal position in terms of power or political influence.

The Millennium Development Goals (MDGs) program in Indonesia started with eight MDGs targets, namely eradicating poverty and hunger, achieving education for all, encouraging gender equality and empowering women, reducing child mortality, improving maternal health, fighting HIV/AIDS, malaria and disease. other infectious diseases, ensuring environmental sustainability

2.4. Human Rights Theory

Upholding human rights is a universal thing and every country should be able to do it in order to maintain respect for the rights and dignity of fellow human beings. Universal enforcement of human rights means that it applies to every human being. The UN emphasizes this in the UDHR and specifically regulates the enforcement of human rights for women in CEDAW, as it is known that women are considered a minority who in various countries still experience oppression. CEDAW is the UN's effort to ensure that the principle of equal rights of gender differences applies in legislation and social practices in every country in the world.

CEDAW (The Convention on the Elimination of All Forms of Discrimination against Women) was born from the experience of discrimination against women in various parts of the world and the long struggle to build a global commitment that women's rights are human rights. Human rights for women are equal to men, where women have the right to everything related to their life in the family, nation and state. The CEDAW Convention agrees internationally to eliminate all forms of discrimination against women. namely: rights in the family (marriage), politics, employment, education, health, citizenship, economics.

In 1980 Indonesia signed the CEDAW Convention (Convention on the Elimination of All Forms of Discrimination Against Women) and further ratified it in 1987 through Law Number 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination against Women.

3. Research Methods

The type of research used in this research is normative juridical, namely examining law which is conceptualized as a norm or rule that applies in society and is a role model for everyone's behavior. The approach in this research is a statutory approach which is carried out by examining all laws and regulations related to this research, and a conceptual approach by studying the views and doctrines that have developed in science. health law.

4. Results and Discussions

Reproductive health is an important health issue that needs attention from the Indonesian state. to ensure the fulfillment of women's reproductive health rights based on the life cycle, maintaining and improving the health of the reproductive system, so as to form a healthy and high-quality generation. For millennium development (MDGs), there are a number of factors that make it difficult to achieve the target, including uneven development, poor infrastructure, and unequal quality of health services between provinces.

Women's reproductive health services are still lagging behind, early pregnancy, illegal abortion, sexual harassment and domestic violence are all directly related to reproductive health. That is why it is necessary to know about health law, as early as possible, women are introduced to the rights and obligations regarding their own reproductive organs. Prioritizing equal opportunities for women in terms of technological advances related to reproductive health.

The issue of abortion is one of the scopes of reproductive health which continues to be discussed in our country, in law number 17 of 2023 concerning Health article 463 it is clearly regulated that starting from health workers who carry out the action, places or facilities up to counseling teams are subject to criminal penalties. The act of illegal abortion grows in line with the number of people interested in it, ranging from children to adults. Advances in science and technology and easy access to information also encourage this age group of children to engage in free sex and end up getting pregnant and dropping out of school. Choosing to have an illegal abortion that is unsafe and has no legal protection.

In other legal cases, pregnancy resulting from rape, of course the community hopes that women's reproductive rights will be fully recognized and that they will be given legal protection to have an abortion. Whether women who are victims of rape can choose to terminate an unwanted pregnancy as part of their reproductive rights.

The criteria for indicating a medical emergency or being a victim of a criminal act of rape or other criminal acts of sexual violence are exceptions for abortion. Positive law in Indonesia will clearly stipulate criminal sanctions for parties involved in illegal abortions, including the staff who carry out/help, the place or facilities, up to the counseling team.

With the ratification of Law No. 12 of 2022 concerning Crime of Sexual Violence (TPKS), this is a step forward in encouraging the elimination of discrimination and violence against women. It is hoped that the TPKS Law can improve the state's response in fulfilling the rights of victims of sexual violence to treatment, protection and recovery. In order to

implement the TPKS Law, various efforts need to be made, including the formation of implementing regulations, synchronization of the TPKS Law with the Criminal Code Bill or internal policies of law enforcement officials and service institutions. As well as establishing and increasing the capacity of UPTD PPA and community-based service institutions and socializing the TPKS Law to every level of society. Then protection for female domestic workers. Andi emphasized that the Domestic Workers Protection Bill (RUU PPRT) has been fought for 18 years but has not yet been passed. The ratification of the PPRT Bill is important to ensure that female domestic workers have their human rights as mandated by CEDAW fulfilled.

Program Millenium Development Goals (MDGs) di Indonesia MDGs dimulai dengan delapan sasaran MDGs yaitu memberantas kemiskinan dan kelaparan, mencapai pendidikan untuk semua, mendorong kesetaraan gender dan pemberdayaan perempuan, menurunkan angka kematian anak, meningkatkan kesehatan ibu, memerangi HIV/AIDS, malaria dan penyakit menular lainnya, memastikan kelestarian lingkungan hidup.

CEDAW (The Convention on the Elimination of All Forms of Discrimination against Women) was born from the experience of discrimination against women in various parts of the world and the long struggle to build a global commitment that women's rights are human rights.

5. Conclusions and Recommendations

5.1. Conclusions

The existence of physically and physically healthy women determines the direction of development, where the generation of the nation that is born is also physically and physically healthy. Women really determine the quality of the golden generation achieved in 2045, therefore health services for women must uphold respect for the right to health as a whole, without discrimination.

To achieve justice and gender equality, several things are needed, including political support from leadership, PUG institutions, Human Resources, Budgets, Gender Analysis Tools, data disaggregated by gender and Community Participation.

Providing opportunities for women in the sense that women are empowered to obtain their rights based on justice, so that the problem of discrimination can be raised at the international level and so that the country/government concerned pays more attention to justice for women.

5.2. Recommendations

Legal education in educational institutions becomes an obligation and is implemented from an early age and invites school participation in taking part in academic activities related to women's empowerment to realize the millennium development targets (MDGs), namely the quality of health services which include women's reproductive health.

Bibliography

Books

- Apeldoorn, L.J. 2001. *Pengantar Ilmu Hukum*. Jakarta: Pradnya Paramita.
- BKKBN. 2021. *BKKBN*. 23 July. <https://www.bkkbn.go.id/berita-pemenuhan-hak-kesehatan-reproduksi-di-masa-pandemi>.
- Kansil, C.S.T. 1991. *Pengantar Hukum Kesehatan Indonesia*. Jakarta: Rineka Cipta.
- Muchtar, Marsudi. 2016. *Etika Profesi dan Hukum Kesehatan: Perspektif Profesi Bidan dalam Pelayanan Kebidanan di Indonesia*. Yogyakarta: Pustaka Baru Press.
- Siregar, Rospita A. 2023. *Hukum Kesehatan*. Jakarta: Sinar Grafika.
- Takdir. 2018. *Pengantar Hukum Kesehatan*. Palopo: Lembaga Penerbit Kampus IAIN Palopo.

Magazines, Papers, and Journals

Laporan Korban pada Koalisi Perempuan Indonesia wilayah Jawa Timur, 12 Oktober 2012

Legislation

- Undang-undang dasar 1945
- Undang Undang RI nomer 1 Tahun 2023 Tentang KUHP
- Undang Undang RI nomer 17 Tahun 2023 Tentang Kesehatan
- Undang Undang RI nomer 36 Tahun 2009 Tentang Kesehatan
- Kitab Undang Hukum Pidana

Website/Internet

- Wikipedia, Pemerkosaan di Indonesia, Artikle, tanpa tahun, diakses dari <http://www.wikipedia/wiki/pemerkosaan-di-Indonesia>.
- <https://eprints2.undip.ac.id/id/eprint/8367/3/BAB%202.pdf>
- [https://sehatnegeriku.kemkes.go.id/baca/rilis-media/20230921/0743910/undang-undang-kesehatan-menjamin-pemenuhan-hak-kesehatan-reproduksi-untuk-membentuk-generasi-yang-sehat-dan-berkualitas/diakses 9 desember 2023](https://sehatnegeriku.kemkes.go.id/baca/rilis-media/20230921/0743910/undang-undang-kesehatan-menjamin-pemenuhan-hak-kesehatan-reproduksi-untuk-membentuk-generasi-yang-sehat-dan-berkualitas/diakses%209%20desember%202023)
- <https://www.bkkbn.go.id/berita-pemenuhan-hak-kesehatan-reproduksi-di-masa-pandemi>
- Catatan Komnas Perempuan Memperingati 38 Tahun Ratifikasi CEDAW 1 Agustus 2022