HEALTH PROTECTION AS A CITIZEN'S CONSTITUTIONAL RIGHT THROUGH A CONSTITUTIONAL COURT DECISION

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ABSTRACT

Purpose: To find out the policies in fulfilling human rights related to health that are adhered to by everyone in Indonesia, both since the birth of the Universal Declaration of Human Rights through the Constitutional Court Decision.

Theoretical framework: Human Rights (HAM) were ratified starting in 1948. Every human being in Indonesia must get their right to health. The most important means of achieving this goal are national, legal, and political policies, especially laws.

Method/design/approach: The methodology used is normative legal research using a qualitative approach. This study examines the fundamental right to health protection guaranteed by the Constitution, which the government must uphold for its citizens.

Results and conclusion: The findings of this study show how the decisions of the Constitutional Court can protect and fulfill human rights in the health sector while ensuring that various statutory provisions made by the DPR and the President guarantee the protection of citizens' rights.

Research implications: If the government makes a wrong policy in protecting the community. So, the government has violated human rights. This problem will result in an attitude of protest by the public in general so that the importance of a decision through the Constitutional Court Decision.

Originality/value: The government has a significant role in making policies to protect its people. Because every human being in Indonesia has human rights regulated by the laws of the Republic of Indonesia.

Keywords: health protection, constitutional rights, decisions, constitutional court.

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A PROTEÇÃO DA SAÚDE COMO DIREITO CONSTITUCIONAL DO CIDADÃO ATRAVÉS DE DECISÃO DO TRIBUNAL CONSTITUCIONAL

RESUMO

Objective: Conhecer as políticas de cumprimento dos direitos humanos relacionados com a saúde que são seguidas por todos na Indonésia, tanto desde o nascimento da Declaração Universal dos Direitos Humanos até à Decisão do Tribunal Constitucional.

Enquadramento teórico: Os Direitos Humanos (HAM) foram ratificados a partir de 1948. Todo ser humano na Indonésia deve ter direito à saúde. Os meios mais importantes para atingir este objectivo são as políticas nacionais, jurídicas e políticas, especialmente as leis.

 Método/desenho/abordagem: A metodologia utilizada é a pesquisa jurídica normativa com abordagem qualitativa. Este estudo examina o direito fundamental à proteção da saúde garantido pela Constituição, que o governo deve defender para os seus cidadãos.

Resultados e conclusão: As conclusões deste estudo mostram como as decisões do Tribunal Constitucional podem proteger e cumprir os direitos humanos no sector da saúde, garantindo ao mesmo tempo que várias disposições legais feitas pelo DPR e pelo Presidente garantem a protecção dos direitos dos cidadãos.

Implicações da investigação: Se o governo adoptar uma política errada na protecção da comunidade. Portanto, o governo violou os direitos humanos. Este problema resultará numa atitude de protesto por parte do público em geral pela importância de uma decisão através da Decisão do Tribunal Constitucional.

Originalidade/valor: O governo tem um papel significativo na elaboração de políticas para proteger o seu povo. Porque todo ser humano na Indonésia tem direitos humanos regulamentados pelas leis da República da Indonésia.

Palavras-chave: proteção à saúde, direitos constitucionais, decisões, tribunal constitucional.

1 INTRODUCTION

The foundational idea of a law-based state is that the rule of law serves as the ultimate authority for formulating, deciding, and resolving the legal procedures governing interactions between the state and society or between members of different communities (Duguit, 2018; Hanifah & Purba, 2021). Therefore, the judicial power exercised by the judicial power that manifests itself in the institutions of the Supreme Court and the Constitutional Court becomes necessary in a state and social life if there is a conflict in the legal relationship between the parties. According to Bagir Manan, a modern rule of law combines the concepts of a rule of law and a welfare state. According to this idea, the state or government is responsible for maintaining public safety or order and must promote social justice and the general welfare of the populace. The term "the democratic rule of law" (German: "democratische rechtstaat") refers to a rule of law that is based on a democratic system (O'Donnell, 2004; Hamid et al., 2009; Esquith, 1999).
According to Immanuel Kant and Frederich Julius Stahl's concept of rechtsstaat, which is followed by countries that follow the legal system of Continental Europe, and according to Albert Van Dicey's concept of the rule of law, which is followed by countries that follow the legal system of Anglo Saxon, the rule of law principle continues to place a high priority on the defense and fulfillment of human rights that apply to every country that follows the legal system. This is a fundamental principle formulated and enshrined in every constitution of every nation in the world. This is especially true when one considers that, in many cases, the struggle of the populace to defend itself from an arbitrary ruling regime gives rise to the development of a nation's constitution. Men frequently take advantage of the populace.

The French people also went through this when they heroically fought in the French Revolution against the then-King of France, Louis XIV, who frequently acted unjustly to his people, as did the British, whose experience began with the Magna Carta. About the aforementioned, Sri Soemantri claimed that a country's constitution is created as a formal document that incorporates (Soemantri, 1987):

1. The outcome of the country's historical political conflict
2. The highest stages of national constitutional growth
3. The perspectives of national leaders that will eventually come to pass, both now and in the future
4. A desire that should guide the growth of the nation's constitutional existence.

Regarding the information that must be contained in a constitution, Sri Soemantri emphasized further that a constitution typically has three essential elements, namely:

1) Human rights and the rights of other citizens are guaranteed
2) Creation of a nation's essential constitutional framework
3) The division and restriction of constitutional duties, which are also essential, are present.

According to Sri Soemantri's opinions expressed above, particularly points 1 and 3, the structure of state power in general and the State of Indonesia in particular also adheres to Montesquieu's Trias Politica theory with a checks and balances mechanism in the constitutional system by dividing the power to administer the state into 3 (three) main functions, namely legislative, executive, and judicial powers.
To achieve a democratic, lawful state, the Indonesian State concept is idealized. These clauses may be found in Article 1 of the 1945 Constitution, which states that the State of Indonesia is a constitutional state and that the Constitution upholds the sovereignty of the people. Therefore, in order to achieve democracy based on the law (constitutional democracy) or a democratic legal state (democratische rechtstaat) (Huq & Ginsburg, 2018; Asshididiqie, 2005; Kis, 2003; Habermas, 2001; Loughlin, 2019), all acts of state power must constantly adhere to the law.

The most crucial tool for upholding and defending human rights (HAM), divided into civil and political rights and rights in the economic, social, and cultural (ESC) sphere, has been national legal and political policies, particularly in the form of laws. This has been true since adopting the Universal Declaration of Human Rights (UDHR) in 1948. To uphold and protect human rights by the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and outlined in laws and regulations, according to the provisions of Article 28I, paragraph 5, of the 1945 Constitution of the Republic of Indonesia. Similar rules can be found in Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "In exercising their rights and freedoms, each person is obliged to comply with the limitations determined by law with the sole purpose of ensuring recognition and respect for the rights and freedoms of other people."

Each legislation controls the rights and obligations of citizens in the civil, political, economic, social, and cultural spheres, as indicated above through the legal and political policy of this law, which the DPR created in conjunction with the President. In light of the numerous provisions spread throughout the 1945 Constitution of the Republic of Indonesia, beginning with the provisions of Article 27 to Article 34, legislators must carefully consider and formulate legal norms or rules in order to avoid creating a legal norm that is in opposition to the realization and protection of human rights. Suppose there are still claims that a law's provisions violate the people's or citizens' human rights. In that case, the populace may file a lawsuit with the Constitutional Court of the Republic of Indonesia because the law's provisions have harmed their constitutional rights and authorities which have exercised those rights, individually or in groups like customary law community units, or if they are part of a public or private legal entity.
2 THEORETICAL FRAMEWORK

2.1 HEALTH PROTECTION AND CONSTITUTIONAL COURT DECISION

Every citizen in Indonesia has the right to obtain health protection. Because the right to health is part of every community's human rights (HAM). The rules relating to protecting the right to health in Indonesia are regulated in Article 5 paragraph (2) of Law of the Republic of Indonesia Number 36 of 2009 concerning Health, which explains that everyone has the right to obtain safe, quality, and affordable health services. The article states that health protection has become a priority part of the Indonesian government.

To attain the maximum degree of public health as an investment in resource development, health development aims to enhance awareness, will, and ability for everyone to live a healthy lifestyle. This is the goal of Law Number 36 of 2009 concerning Health (UUK). Human resources that are commercially and socially productive. UUK, approved on October 13, 2009, is an update to Health Law Number 23 of 1992. UUK has XXII CHAPTERS and 205 articles, compared to Health Law Number 23 of 1992, which only has XII CHAPTER and 88 articles; it ought to be more advanced. The new Health Law (UUK) governs the following: 1) Principles and objectives; 2) Rights and Obligations; 3) Government duty; 4) Resources in the health sector; and 5) health initiatives. 6) Nutrition, 8) Mental Health; 9) Communicable and Non-Communicable Diseases; 10) Environmental Health, Occupational Health, 12) Health Management, 13) Health Information, 14) Health Financing, and 15) Community Participation; 7) Health of Mothers, Children, Babies, Adolescents, the Elderly, and People with Disabilities; 8) 16) Health Advisory Board; 17) Direction and Control; 18) Examination; and 19) Criminal provisions. The fact that vulnerable populations, such as mothers, infants, children, older people, and low-income families, will receive particular focus in health development from 2005 to 2025 is a strategic issue emerging in society. By accelerating the accomplishment of the Millennium Development Goals (MDGs), which include raising the life expectancy to 72 years, lowering the infant mortality rate to 24 per 1,000 live births, lowering the maternal mortality rate to 118 per 100,000 live births, and lowering the prevalence of malnutrition and malnutrition in children under five to less than 15%, the health development target for the end of 2014 is to improve public health (Santoso).
3 RESEARCH METHODS

Normative legal research using a qualitative approach is the research methodology used (Manipol, 2023). Legal structures such as legal principles, legal systematics, and the degree of legal synchronization are studied in this study using legal analysis (Teacher, 2006; Babüroglu & Ravn, 1992). The primary unit of this methodology is the law protecting one's right to health. This kind of study is theological and will only clarify how Indonesia's government approaches addressing health issues. This study looks at how important it is for the state to protect everyone's health under the Constitution, as determined by the Constitutional Court's ruling. Researchers will search for relevant literature from various periodicals and information addressing the legal foundation linked to the community's right to health by employing normative research. As the bearer of authority, the state must implement several legal measures that can give its citizens a sense of security and comfort.

4 RESULTS AND DISCUSSION

4.1 PROTECTION OF CITIZENS' HEALTH RIGHTS

There has been a global threat to the health sector of all residents since 2020, regardless of whether these countries are rich countries with the best and most up-to-date medical facilities in the world. Even the majority of developing nations are categorized as impoverished nations. The 2019 coronavirus is the name of the disease outbreak that started in Wuhan, China, in late 2019 and has since spread worldwide (Wu et al., 2020; Wang et al., 2020). In practically every nation in the world, the coronavirus has taken a large number of lives, including both those who have passed away and those who are receiving medical care in hospitals and at home (self-isolation), but many have recovered. Since the March 31, 2020, release of Presidential Decree Number 11 of 2020 concerning establishing a COVID-19 Public Health Emergency, the State of Indonesia has been identified as one of the nations affected or exposed to this coronavirus.

Every nation's primary responsibility is to ensure the health and safety of its citizens, hence the phrase "public health and safety is the highest law in a country" (solus populi suprema lex) (Benedek et al., 2007). As a reflection of the recognition and fulfillment of fundamental human rights for the existence of its people, a country's constitution, which is the highest rule of law, must demand protection for its population. The Republic of Indonesia's 1945 Constitution, which serves as the nation's legal
foundation and declares this health issue essential, demands that the State provide guarantees for all its residents without exception. This is evident, for instance, in the provisions of Article 28A of the 1945 Constitution of the Republic of Indonesia, which states that "Everyone has the right to live and has the right to defend his life and livelihood," as well as the provisions of Article 28H paragraph (1), which states that "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy life."

The protection of an individual's right to privacy, which the state is obligated to uphold, is fundamental to protecting health as a human right and preventing infectious disease outbreaks (Mahdi, 2023). Therefore, in this case, a balanced layout is required. In order to ensure that the government's efforts to combat this infectious disease outbreak are legal, regulations are required. This is because measures taken by the government to safeguard the public interest or the interests of the larger community may inadvertently violate the rights of specific individuals (Kurnia, 2007).

The Law Number 36 of 2009 concerning Health was created due to the aforementioned constitutional mandate, and Article 4 of that law states that everyone has a right to health. The requirements of Article 5 of this law then reiterate that everyone has the equal right to access healthcare resources and to get safe, high-quality, and reasonably priced medical care. In addition to the health above law, Law Number 6 of 2018 regarding health quarantine has also been released, which mandates that the Government and each Regional Government be in charge of defending the public health from illnesses and risk factors that could result in a Public Health Emergency by putting in place a health quarantine.

The widespread outbreak of the coronavirus, which has already become a pandemic and has affected almost all countries worldwide, has hurt the economic growth of many nations, including Indonesia, not only because it has disrupted the production of goods and services but also because investment has been hindered (Baker et al., 2020; Hanifah et al., 2023). As a result, among other things, there are restrictions on the export and import of commodities, and even though people's purchasing power has significantly diminished, items have grown more expensive since they are hard to get. The impact is severe, given that the tourism industry has numerous branches or corporate entities, including hotels, restaurants, tour companies, tour guides, etc. The COVID-19 epidemic
has significantly negatively influenced other business sectors (Hoque et al., 2020; Khan & Naushad, 2020; Pudjiastuti & Hadi, 2020).

In order to prevent, control, and eradicate infectious diseases and their effects on people and the environment, the government, regional governments, and the community must do so. The provisions of Article 153 Law Number 36 of 2009 require the government to ensure the population has access to immunization materials (vaccination) that are safe, high-quality, efficient, and equitable for disease control activities. In order to achieve herd immunity, which offers direct or indirect protection to the majority of individuals who live in groups, the government should be able to guarantee that all Indonesians obtain vaccine services. This will help to prevent the public from being exposed to the spread of Covid-19. According to Article 171 of Law Number 36 of 2009, a budget line is allotted in the amounts of 5% of the APBN (excluding salaries) and 10% of the APBD of each Province or Regency/City to handle the financing of the government's tasks and commitments. The distribution of the health budget is prioritized for the benefit of public health services, particularly for the underprivileged, the elderly, and neglected children.

Given how devastating the effects of the coronavirus outbreak have been, not only the Indonesian state and people but also people in other countries have experienced the effects of this COVID-19 pandemic (Li et al., 2020; Biswas & Sen, 2020). Hopefully, it will serve as a valuable impetus to reorganize prevention and control measures and initiatives to recover from this disease epidemic and others of a similar nature. This can be accomplished by amending the laws governing finance matters especially relevant to the health sector, namely those outlined in Law Number 36 of 2009's provisions of Article 171.

For each Provincial, Regency, and City Government, the allocation of budget items in the APBN is presumably 5% and 10% of the APBD, to be changed with an increase in budget allocations, especially in the development of the Draught APBN and Draught APBD. For instance, this increase can be calculated by raising the budget allocation in the APBN from 5% to 10% to 20%. Similarly, only with a rise in the APBD budgetary allotments for each autonomous area. Particularly in light of the rise in pandemic outbreaks of this contagious illness that have necessitated home quarantines, regional quarantines, hospital quarantines, and significant social restrictions (PSBB). According to Articles 53 to 60 of Law Number 6 of 2018 concerning Health Quarantine,
the Central Government is responsible for providing all community members' basic living needs as well as fodder for livestock that are in all types of quarantine mentioned above, as long as residents are quarantined in each type of quarantine, the community is limited in their space for activities outside the home and even especially to be able to work as usual (Pardede, 2021; Saputra, 2022; Zubaidah, 2022).

4.2 CONSTITUTIONAL RIGHTS THROUGH DECISIONS OF THE CONSTITUTIONAL COURT

If the proposed legislation, as outlined above, receives a slow response from the parliamentarians, the government (President) or DPR members can begin legislation. As a sign of the protection of people's constitutional rights as outlined in Articles 28A and 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the public may use this as a legal basis to challenge the two laws mentioned above, Law Number 36 of 2009 and Law Number 6 of 2018, in the Constitutional Court. These rights include the right to purchase health insurance and the right to prevent and treat infectious disease outbreaks. Covid-19.

To determine factually whether the Constitutional Court can exercise its power in a way that protects human rights and upholds justice, benefits, and legal certainty, among other things that are crucial to the idea of a democratic rule of law, it is permissible to evaluate a law in light of the 1945 Constitution of the Republic of Indonesia (Iriyanto, 2008; Qamar, 2012; A).

Judges' independence is among the most crucial and fundamental concerns surrounding the use of judicial power, particularly in relation to the authority of courts to review laws regularly. The principle of legality provides a guarantee of the protection of human rights and government based on a constitutional system and fundamental law, which states that the government must only act by applicable law (Suseso, 1991; Lederman, 1956; Cox, 1995). The judiciary's independence is also an essential requirement in a country where the rule of law prevails.

The implementing agency or institution is expected to exercise legal control over other state authorities and prevent and minimize the inclination to abuse authority or power because of the independence of judicial power from other branches of power. Lack of judicial independence, particularly from the influence and interference of government power, will allow for government abuse of authority and disregard for human rights.
According to Hoesein (2013), who agrees with those above, "the position of the judicial power must be free from other state authorities by understanding the function of the judicial power as a body that attempts to realize the legal principles included in the 1945 Constitution. This is significant because for this institution to perform its duties effectively and forward the objectives of a rule of law state, it must be free from the interference of other forces.

5 CONCLUSION

According to the Republic of Indonesia’s 1945 Constitution, Indonesia is a nation that upholds the rule of law. This is demonstrated by the country's acceptance of the rule of law's fundamental principles. Power in state functions is divided and distributed to prevent the amassing of power that can result in the abuse of state authority. Additionally, the constitution honorably recognizes and upholds human rights, so the prerequisites for the rule of law in the form of equality before the law and supported by initiatives to establish a free and impartial judiciary serve as a guide for observing the practice of running government along the lines of the rule of law. Democratic. The role played by the Constitutional Court in establishing a democratic rule of law through the exercise of one of its powers, the review of laws in light of the Republic of Indonesia’s 1945 Constitution, shows that the requirements for a rule of law society that ensure the protection and realization of human rights have been adequately met through its rulings so that the different statutory provisions created by the DPR and the President can protect citizens’ rights.
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