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Juridical Review of the Assembly's Recommendation Required for Civil Suit Administration from the Human Rights Perspective

Dody Novizar Mardyansyah[1], Anak Agung Gede Duwira Hadi Santosa[2].
[1]Universitas Udayana, Denpasar, Indonesia, dodynovizar@gmail.com.
[2]Universitas Udayana, Denpasar, Indonesia, agung_santosa@unud.ac.id.

Corresponding Author: dodynovizar@gmail.com[1]

Abstract: The enactment of the health law in 2023 will have a fundamental impact on the development of health law, in which the Article 308 (2) implies for the civil liability, with the rules that patients who are harmed are required to request a letter of recommendation from the assembly. Meanwhile, Human Rights Law No: 39 of 1999 clearly stated that those who feel that their interests have been harmed can directly file a civil claim/lawsuit to a court institution. Thus, there is a conflict of norms between the two laws and regulations which has an impact in the legal uncertainty. For that reason an in-depth analysis of the issue was carried out. Axiologically this research was conducted aiming for finding out the essence of the recommendation letter issued by the assembly. This research uses doctrinal research methods. The research results show that the requirement to request a letter of recommendation from the assembly as a condition for submitting civil legal action is a contradiction to the principles of basic rights (HAM) as mentioned in Law 39 of 1999.

Keyword: Letter of Recommendation, Administration, Civil Lawsuit, Human Rights.

INTRODUCTION

In our country, Indonesia, the health aspect is crucial in the survival of the community. When referring to the principles contained in Pancasila and the 1945 Constitution, it is clear that well being is considered an element of human rights (HAM) and is an integral part of the elements of welfare. On the other hand, the government as the representative of the state must ensure that the rights to live as well as the right to be included as the health community members have been served, covering those in low economic communities. The government, through the national health program, has committed to provide various excellent and modern health services that are easily accessible to citizens, with the positive aim of obtaining maximum and comprehensive health benefits for citizens. (Japar, et al, 2024: 953).

That in principle health development is an effort to increase the degree of prime and optimal health. The Health aspects should not be considered trivial considering that health is one of the basic rights (HAM) which is an obligation and responsibility of the state towards its citizens. Hence, one way to make it happen is through a health development program that is superior, best and affordable.

That evidently the protection of human rights is an embodiment of the principles and concepts of the rule of law, where this has been lawfully manifested in a regulation issued by the constitution. Looking through the human rights perspective, there are 3 (three) rights inherent in humans which underlie the legal concept of health which have been manifested in the 1945 Constitution, particularly in the amendments in 2000, called the right to obtain health care (the right to have the healthcare) which is incorporated in ex. article 28H (1) of the constitution, followed by the right to self-determination as implied in Article 28E (2) of the constitution and finally, the right to obtain information (the right for information) as implied in Article 28F of the constitution. This means that health care is an essential element which must be respected and protected, so that legally it is appropriate to formulate it in writing as a regulation in order to create certainty regarding the most basic human right, called the right for the health treatment. This concept is an embodiment of article 25 of the UDHR, which has the principle that every human being has the natural right to obtain health care in accordance with the standard of living that has been guaranteed. As a matter of fact, legally this article is in line with the clause of Article 28 H of the 1945 Constitution which expressly guarantees that citizens of Indonesia has the right to get the social security.

This shows that since 2000, the Republic of Indonesia has adopted 3 (three) basic human rights related to the health law. As matter of fact in 2009 the three basic rights (HAM) were accommodated in Law No: 36/2009 concerning Health, as we are all aware, after the omnibus law was issued, it was then changed to Law No. 17/2023, and has become a health law specialist lex law to the present date. The enactment of Law 17/2023 significantly changes the regulations relating to the well-being, including changing concepts and mechanisms in regulations if there are allegations of errors or violations committed by health service providers.

That in Law 17/2023 concerning the well-being, it is regulated about the formation of a panel which required the authority to receive complaints, even examining and adjudicating regarding whether or not there are issues that are principally detrimental to patients, which are allegedly committed by health service providers, who in this case are parties of medical personnel and/or medical practitioner. Apart from that, the panel is also given the authority to examine and adjudicate violations related to discipline allegedly committed by the health service providers and also carries out basic functions related to enforcing rules that are legally required to be obeyed by medical personnel in providing health services. (Nugrianti, et al, 2017 : 5).

That if it Should i be closely examined, there are many abuses that occur in terms of providing the health facilities for the community, in which the health services provided reflect injustice and have the potential to cause harm to patients as some aspects of humanity is neglected and often some of the services provided are actually contradictory with the existing professional standards and it has an impact on patient suffering. If this is not resolved properly and quickly, it could potentially result in a medical dispute in which the patient demands responsibility from the health service provider which actually causes a violation of the patient's rights in receiving and implementing the health services, a discrepancy in the form of the patient's expectations with reality which actually should be accepted by patients (Humaira & et al, 2020: 83). These medical disputes not only could impact the individuals involved, but can also shake public trust in the health system as a whole (Putri and Yusuf, 2024: 2076).

That if it is Referring to Article 308 (2) of Law 17/2023 concerning the well-being, which in principle regulates that the health service providers can be held legally accountable for an action related to the provision of health services which clearly harms the patient's basic rights, therefore there must be a letter of recommendation issued by the assembly as implied in Article 304. Hence in article 304, there is a description of the formation of a panel in order to uphold the professional discipline, making the government considers it necessary to form a committee to receive complaints and related examinations regarding the existence or absence of a disciplinary violations committed by the health service providers.

That the latest health law brings substantial changes through the introduction and amendment of the mechanisms and concepts in article 308 paragraph (2), which directly creates interesting and controversial legal dynamics. Therefore, this article is has become the focus of this research considering it has a significant impact on the civil rights and human rights attached in patients. The dynamics of changes in the substance of health law are a reflection of the response to medical developments, health ethics and increasingly complex societal demands.

That based on the background above, it is essential to carry out an in-depth analysis regarding the necessity of a recommendation from the panel as an administrative requirement in pursuing civil legal action by the patients who feel aggrieved by the actions and performance of the health service providers. Thus, this research focuses on the formulation of the problem, that is: what is the essence of the recommendation letter from the assembly which is an administrative requirement observed from a human rights perspective?

The purpose of this research is to describe legal certainty regarding legal remedies that can be legally taken by a patient or their family who are significantly aggrieved in receiving a service in the health sector from the health service provider. It is expected that the research results in the form of conclusions and suggestions will be able to provide many benefits for the nation and state, especially the community. Additionally from the theoretical side, that it is being able to contribute ideas to the development of basic rights (HAM) which are naturally, universally attached in humans from the birth, as well as the benefits from the practical side as inputs for the government in issuing the regulations that should prioritize the values of human rights as the form of human rights protection.

METHOD

This research uses doctrinal research methods, in which the research is carried out by studying and analyzing certain problematic issues using statutory regulations, doctrine and legal theory (Muhammad, 2024: 52). In responding to the issues stated in the background above, the research also uses a regulatory approach and a conceptual approach (Andini, et al, 2022: 975).By utilizing these two approaches, it is expected that the researchers will obtain a concrete and comprehensive information In order to answer problematic issues that is the object of this research.

Meanwhile, the source material in this research remains the doctrinal research concept that is using secondary data in which the secondary data is obtained by the researchers from a literature study. Evidently the Secondary data includes primary legal materials, secondary legal materials, and also tertiary legal materials as well as the material that the researcher obtained through literature study that will be analyzed using prescriptive analysis techniques.Those are essentially intended to provide and defined solutions through arguments obtained from the research results (Dewata and Achmad, 2013: 109).

RESULTS AND DISCUSSION

That human health is an essential and important element for the progress of a country. Apart from that, the health aspect is also one of the prime needs and basic foundations for conducting all life activities (Arthanti, 2024: 92). In fact, well - being is an element that cannot be separated from human life, every human being is consciously aware that life without a perfect health condition is meaningless, therefore well-being has become the desire of every party. As a consequence, the constitution guarantees the availability of the health services for the citizens and is the main task and role of the government in ensuring the health of its citizens, both physical and spiritually. Through the Ministry of Health, Indonesia has launched national health development with the main goal of implementing a comprehensive and optimal level of well-being for all levels of society.

One of the basic needs of humans is excellent physical health, therefore, the health aspect is a fundamental right of the society which is essentially a must protected and ought to be

guaranteed in issuing a regulation. Hence the welfare can be achieved when aspects of the public health have been optimally carried through and fulfilled.(Hartati and Widya, 2017: 16). In accordance with the related matters regarding the development Of having an excellent health, it should be treated as a major investment for a country to achieve acceleration in gaining prosperity. As we are all aware, that having been categorized as the developing country, the Republic of Indonesia should elevate the level of its citizen welfare in the best way possible. Obviously through the role of government in the fulfillment of the basic needs of the citizens such as necessities for having an excellent health, best education and other needs such as food and clothing.

That the humanitarian principles are the main basis for health development with regards with human rights, justice, equality and harmony. Humanity aspect in health should be based on the Almighty God in order to build mutual respect, maintaining a level of freedom in choosing the health service options. Next,the Country has to strive in providing the best service in the health sector by supplying professional medical practitioner with the modern sophisticated facilities (Fitri, 2024: 117). Furthermore, the state has to be present in the society by creating and issuing several regulations in the health sector which are served as guidelines and juridical basis in providing health services to community members.

That the Forms of legal protection for patients have been guaranteed by the constitution in various ways of regulations which focus on the aspects of the goals expected by each patient, that is to say recovery.

That the so called legal protection is definitely meant for the fulfillment of respective rights and obligations between the health service providers

with the subjects who are receiving the health services. However, it should be prioritized on the human rights naturally and universally which inherent in every human being, which shall not be diminished or taken over by the state.

That The Civil Code is one of the regulations that regulates the relationships that are formed between legal subjects (doctors) and legal subjects (patients), which in the legal term the Civil law is usually referred to as an engagement relationship. However, in the health sector The relationship that occurs between the provider and recipient of health services is referred to as the therapeutic transactions which are a normative obligation that can arise from the existence of an agreement or even it is due to the law. In the health sector, therapeutic transactions occurs inasmuch of the existence of a medical service relationship between the doctor as the subject and the patient as the subject as well.

That starting from a therapeutic relationship, a right is also attached as a balanced obligation between patients as recipients of health services and the health service providers in which sometimes in reality what the patient receives is the opposite of what the patient himself expected. Since the subjects who provide the health services are medical personnel and/or medical practitioner and the patient is only the recipient of the health service, therefore sometimes the patient's position is weak and can be discriminated against, potentially causing steer directly or indirectly.

That The Law article number 17/2023 concerning health regulates the existence of inherent rights to patients in obtaining the best health services. This indicates that each individual has equal rights. The doctor must inform or advise the true information which is trustworthy and fixed for the benefit of the patient wherefore the Patients have the right to know about what really happened to them. The Patients have basic rights which are also the objectification of human rights related to choosing and determining what ought to be done for himself next without constraint or threats from the doctors or other parties.

In the realm of human rights, the health law is based on two aspects of rights which are first, regarding the right to have health care service. Second the right to self-determination. Therefore, disputes often occur between the patient as the subject and the medical personnel as the subject as well because of these two equal rights. As a matter of fact Potential dispute in

Medical literally means a dispute arising from a legal relationship between legal subjects which are doctors and legal subjects in this case is patients in terms of related efforts and endeavors for healing (Meri, Handayani, Hadi, 2020 : 250)

That The Fulfillment of the right to having the health treatment must be guided by a non-discriminatory attitude towards citizens, including vulnerable groups, nevertheless sometimes ironically, some are being treated differently in the provision of health facility services, administration and procedures which often occur in a long-winded and often taking a relatively long time to make matter worse. Not to mention the provision of health facility services to patients which is sometimes very difficult deviating from the SOP and applicable provisions. Furthermore, there are also medical procedures that have the potential to jeopardize the rights of a patient, provided by the service provider of the health care that is arbitrary and goes beyond standard procedures and deviates from standards of the existing health care. Often it is also due to intentional actions, for example inappropriate behavior or incompetence in providing the health services required. However, throughout the provision of health services by the subject which are the medical personnel and the subject who are health personnel have in fact fulfilled its procedural standards and also the existing basic operational standards, then the subject party(medical personnel) and/or subjects (health personnel) are required to be protected.

Should something detrimental occurs to the patient's rights by the party

Of the health service provider, then constitutionally the patient or patient's family has the right to sue the losses suffered in a civil manner in court. However in article 308 paragraph (2) law No.: 17/2023, explicitly states that "the party providing the health services for which the patient or family is held civilly liable who have been significantly harmed by the implementation of the health services, are required to first ask for recommendations from the parties."

That If we look closely at the message conveyed by the article, it means that the health service providers cannot be sued or sued by civil cases if there is no recommendation letter from the panel first. The term "assembly"in article 308 paragraph (2) relating to article 304 of Law 17 of 2023 concerning health, in which if we look closely at the term "assembly" in article 308 (2) UU No.:17/2023 it actually is an assembly to enforce discipline of medical personnel and the staff elements of the health. This means that it is not the panel that examines and adjudicates whether the loss is proven or not the civil matters suffered by the patient, but more like the composition of the assembly that carries out the task in the field of professional discipline, not carrying out duties in the field of law enforcement.

Furthermore in the clause of Article 308 paragraph (2), there is the phrase "must" ask for a recommendation from the panel, which if we interpret the phrase literally "must" has the meaning of being obligated or must (must not), thus if we relate it to the overall meaning of article 308 paragraph (2) it indirectly reflects that the subject of medical personnel and the subject of new health personnel can be requested to have civil liability by the patient if there is a letter of recommendation first. This matter is then being reemphasized in Article 305 paragraph (1) which essentially has legal rules, called "patients and/or patient families who are legally harmed by the health provider service then both medical personnel and health workers can file a complaint to the assembly."

That Article 308 paragraph (2) in conjunction with Article 305 paragraph (1), fundamentally changes the concepts and mechanisms as well as the procedures in the event that a patient wishes to file a legal action of the civil law, in which from a human rights perspective, the concept offered by Article 308 paragraph (2) is contrary to the principles of basic rights (HAM). Therefore it has the potential to create legal uncertainty regarding the efforts that can be taken by the patients who are harmed, and ultimately have implications for the injustice for the society. When referring to the theory of the human rights, the provisions of Article 308 (2) in conjunction with Article 305 (1) is contrary to the human rights which are very essential as they are inherent in - each individual, this is as stated in article 17 of law no. 39/1999 which has

rules of the law, which essentially states that "everyone has the right to live without discrimination, and also has the right to obtain a true degree of justice by one of the ways of filing legal action either by application, or by complaint and/or legal action lawsuits, both in criminal cases and in civil cases or in cases administration, and the person is judged fairly and justly by a judge as the examiner in order to advocate a decision that provides a fair and fair value of the genuine truth"

That if the researchers look closely at the meaning contained in Article 17 of the Human Rights Law, the right to file a lawsuit whether in a criminal case, civil and administrative matters in order to obtain justice is the ultimate right essential, natural and natural inherent in every person (Maskawati, 2024: 27-28).

Meanwhile, this right is fundamentally stated in article 308 paragraph (2) of the Health Law to be hampered or limited by the existence of such conditions that must or must not exist, that is There must first be a letter of recommendation from the panel if the patient or the patient's family wish to file civil legal action.

Apart from that, Article 17 of UU No: 39/1999 also states explicitly towards the existence of fundamental rights for loyal individuals to defend their rights and also in order to guarantee justice and legal certainty by taking legal action which in the civil context is by filing a lawsuit filed against the judge and not the panel as intended in article 308 (2) of Law no. : 17/2023.Thus the essence of the recommendation letter from the panel in article 308 paragraph (2) is a mandatory requirement that must be presented if the patient or patient's family wants to apply civil legal action as a violation of the patient's constitutional and human rights. It is meant to seek justice and true legal certainty for the losses suffered. As a result of legal facts there is a conflict of norms (conflict of norm) or will in the two articles of the law. On the one hand, article 308 paragraph (2) Law 17 of 2023 requires that patients or patient families are unable to file a lawsuit civil law directly but must go through or pass an examination by a disciplinary panel first, while clause 17 of Law 39 of 1999 requires that everyone who feels that their interests have been harmed and their human rights have been violated can submit an application of the civil lawsuits in court to be examined fairly and objectively.

Based on the indications of conflict of norms, the researcher tried to use the principles of preferences as an analytical tool in responding to the conflict of norms phenomenon. However ,it turns out that even legally, the principle of preference failed to address the problematic issues if researchers analyze them using the principle of preference, that is lex specialist .derogate legi generalis (Joehanto, 2021 : 31), in which in reality both of This law is lex specialis thus this principle cannot be applied in responding to the existing issues. Hence when analyze using the principle of lex superior derogatte legi inferior, in which in reality both laws have the same degree, that is, they both have legal status of the law ,making this principle is not appropriate to apply to the issue concerning this matter.

After the researcher observed, analyzed and studied the issue what happened was that there was a conflict of norms between Article 308 paragraph (2) of the Law No.: 17 /2023 with Article 17 of Law No.: 39 /1999. Therefore the researchers came to a conclusion that article 308 paragraph (2) of Law No.: 17/2023 are confirmed to be accommodated and in order not to violate the Article 17 of Law No.: 39/1999, it would be better for the patient or the patient's family who feel that their rights to have the health service is steered by the health service providers can file the civil legal action by filing a lawsuit against the health service provider facilities, such as: hospitals, clinics, or health centers (Siregar, 2023 :81). This is quite relevant considering that in the health sector there are2 (two) legal subjects that can be held responsible which are the facilities provided by the health services such as hospitals, health centers or clinics or from the professional legal subjects such as dentists, doctor , nurses, etc. (Supriyatin, 2018: 192).

That The responsibility of the hospital or clinic as the provider of service facilities for the Health is regulated according to the law mentioned in Article 193 of Law No.: 17/2023, which

in essence stated that "The hospital as a provider of health services has a legal responsibility for any loss caused by the source's negligence particularly conducted by the Health human resources (HR) as they are an integral part of the hospital."

From the clause of the article mentioned, it is clear that a hospital or clinic can be held accountable for the negligence of the health resources (HR) in which the health resources (HR) in question will include medical personnel and/or the medical practitioner. Therefore, the patients who feel that their rights have been violated, leading to being detrimental can take civil legal action by suing or filing an appeal to the hospital or clinics.

That the Regulation requires a letter of recommendation from the inner council to determine whether or not the patient can file civil legal action other than the contradictions (conflict of norms) with the principles of human rights (HAM) which must be protected and respected. These regulations are also seen as inappropriate due to their authority The assembly referred to in Article 308 (2) mentioning that an assembly only has the authority to examine in the realm of disciplinary violations and not in the realm of legal violations (Herniwati, et al, 2020: 221). Therefore the essence of the recommendation letter made by the panel should only be used to enforce discipline and cannot be applied in the realm of law enforcement such as civil lawsuits court realm.

CONCLUSION

That from a human rights perspective, the assembly's recommendation letter is used as an administrative requirement in filing the civil legal action for patients who feels that their rights have been impaired is actually the regulation that is contradictory with their rights as the human beings which are inherent by nature and must be protected and respected. Therefore there is a requirement for the disciplinary panel to issue and provide a letter of recommendation for determining whether or not the patient can file a civil lawsuit (ex. Article 308 paragraph (2) Law No. 17 /2023) is absolutely inappropriate and irrelevant, and contradicts with the principles which are – The principle of human rights (HAM) as manifested in Article 17 UU No.: 39 /1999 concerning human rights (HAM), stated that the disciplinary panel does not have the capacity and neither does it have the authority to determine whether there is harm suffered by the patient in fact they only have limited authority on whether there is a disciplinary violation. The only institution that has the authority in determining whether or not the loss suffered by an individual is proven is a judicial institution that is under the authority of the judiciary.

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