

Legal Certainty: Fulfillment of Human Rights Regarding Health within Omnibus Law through Hospital Accreditation

Kana Purwadi^{✉1}, Hendra Sukarman², and Dhaneswara Awindra Wijaya

^{1,2} Doctoral Program Faculty of Law, Universitas Jenderal Soedirman, Purwokerto – Indonesia

³ International Undergraduate Program, Faculty of Law, Universitas Gadjah Mada, Yogyakarta - Indonesia

Abstract

The second and fourth amendment of 1945 Constitution has placed right to health as a human right. The state is obliged to fulfill health services that consists of promotive, preventive, curative and rehabilitative health services. The state is also obliged to provide a proper health service facility. The term “proper” presuppose to fulfil a particular standard. Since 8th June of 2020 to the inception of the Omnibus Law the hospital accreditation standard is based on the Health Ministry Regulation No. 12 of 2020. The inception of the Omnibus Law on 2nd November of 2020 is impacting the Law No. 44 of 2009 regarding hospital specifically associated with hospital accreditation. This research analyzes the legal certainty of human’s right to health fulfilment within Omnibus Law through the hospital accreditation settings and the urgency under the establishment of Pancasila law. The used research methodology to analyze are normative juridical by examining norms in the legislation system, conducted by researching legal materials and legal documents.

Keywords: Legal certainty, omnibus law, health law, hospital accreditation

Abstrak

Amandemen kedua dan keempat UUD 1945 telah menempatkan hak atas kesehatan sebagai hak asasi manusia. Negara berkewajiban memenuhi pelayanan kesehatan yang terdiri dari pelayanan kesehatan promotif, preventif, kuratif, dan rehabilitatif. Negara juga berkewajiban menyediakan fasilitas pelayanan kesehatan yang layak. Istilah “layak” mengandaikan untuk memenuhi standar tertentu. Sejak 8 Juni 2020 hingga berlakunya Omnibus Law, standar akreditasi rumah sakit berdasarkan Peraturan Menteri Kesehatan Nomor 12 Tahun 2020. Lahirnya Omnibus Law pada 2 November 2020 berdampak pada Undang-Undang Nomor 44 Tahun 2009 tentang rumah sakit yang secara khusus terkait dengan akreditasi rumah sakit. Penelitian ini menganalisis kepastian hukum pemenuhan hak atas kesehatan dalam Omnibus Law melalui pengaturan akreditasi rumah sakit dan urgensinya dalam pembentukan undang-undang Pancasila. Metodologi penelitian yang digunakan untuk menganalisis adalah yuridis normatif dengan menelaah norma-norma dalam sistem perundang-undangan, dilakukan dengan meneliti bahan-bahan hukum dan dokumen-dokumen hukum.

Kata kunci: Kepastian hukum, omnibus law, hukum kesehatan, akreditasi rumah sakit

Copyright©2021 Jurnal Dinamika Hukum. All rights reserved.

Introduction

Right to health is a part of Human Right, thereof the state is obliged to fulfil it (Mardiansyah, 2018). Since the right to health was stipulated within the second and fourth amendment of the 1945 Constitution up until now, there is no data ensuring the fulfilment

✉ Corresponding Author: kana.purwadi@mhs.unsoed.ac.id

of the right to health by the state for every person. The human right to health is a very fundamental right like the freedom of religion, as Paul Hunt's opinion which stated "*although the right to health is fundamental human right that has the same international legal status as freedom of religion or the right to a fair trial, it is not as widely recognized as these and other civil and political right*" (Mardiansyah, 2018) The publication of human right to health in the second and fourth amendment of the 1945 Constitution is believed to be the noble value of the nation, as how *Stufenbeautheorie* Hans Kelsen stated that law is a set of rules which regulates the society, none the less these regulations are based on the values agreed upon with the community concerned (Samekto, 2019).

Health is a pillar of the development of the nation as the dignity of a nation can be measured through its health level. Low health quality will cause a bad influence towards the government. Thus, state must carry out the obligation of conduct and obligation of result as the implementation of economy, social, and cultural right (Mardiansyah, 2018). Article 28H verse 1 of the amendment of the 1945 Constitution states that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to obtain health services (Lubis, 2019). In the fulfilment of the human right to health service, the state developed the national health insurance. Furthermore, Article 34 verse 3 of the amendment of 1945 Constitution stated that the state will be responsible in providing a proper health service and public service facilities. The term "proper" mentioned in the Article 34 verse 3 of the amendment of 1945 Constitution will means that the health service facility provided by the state must not be disorganized, which it will have to fulfil a particular standard, therefore it can be considered to be "proper" (Isriawaty, 2015).

The state obligation in providing proper health service facility will be hard to be measured, if it is not based on a particular standard as a parameter. While on the other hand, the right to health has been ensured by the constitution, it will encourage the development of the health service facility utility by the society. Therefore, it is considered to be prominent to conduct a review of regulations and mechanisms for accreditation of health service facilities to maintain and improve service quality (Nandarj, 2003). This is intended so that the services utilized by the community in exercising their human rights to health constitute quality or appropriate health service facilities in accordance with the mandate of Article 34 paragraph (3) of the amendment of the 1945 Constitution.

The Law No. 11 of 2020 regarding Job Creation that was enacted on 2nd November 2020 annulled the provision regarding Hospital Accreditation that used to be regulated under Article 4 of Law No. 44 of 2009 regarding Hospital. The regulation of a Hospital establishment is regulated under the Governmental Regulation No. 47 of 2021. This particular Governmental Regulation is the implementation form of Article 61 and Article 185 (b) of Law No. 11 of 2020 regarding Job Creation

According to the elucidation mentioned above accordingly the problem that will be discussed within this research will be how legal certainty of the fulfilment of human right to health through Hospital Accreditation in accordance with Omnibus Law and the

urgency of Hospital Accreditation settings in the Omnibus Law for legal certainty of the fulfilment of human right to health as it refers to the Development of Pancasila Law. This research will analyse on how is a hospital accreditation post the enactment of Law No. 11 of 2020 regarding Job Creation will be more able to guarantee the fulfilment of human rights to health and the urgency of hospital accreditation within the Development of Pancasila Law

Research Problems

The formulation of this research problems are as follows: first, how is a Hospital accreditation post the enactment of Law No. 11 of 2020 regarding Job Creation will be more able to guarantee the fulfilment of human rights to health?; and second, how urgent is an accreditation within the Development of Pancasila Law?

Research Method

The analysis used juridical normative research method. The legal materials were analysed qualitatively that is by interpreting and discussing the result of the research materials based on legal definition, legal norms, theory as well as legal doctrines through deductive thinking method.

Discussion

Human Rights to Health within the Development of Pancasila Law

The UN General Assembly Resolution No. 217 A (III) dated 10th December 1948, enacted and proclaimed International Human Rights instruments (Reza, 2019). This resolution consists of 30 Articles, on Article 22 and 25 verse (1) and (2) stated that every human being have the right to social guarantee on economical right guarantee and social as well as the right to life with an appropriate standard for everyone and family upon sufficiency of food, drink, clothes, home, and health service and other social service fulfilment. Similarly to the protection towards children to obtain equal social protection without disputing whether the child is born on a wedlock or not.

The UN General Assembly Resolution No. 200 A (XXI) dated 16 December 1966 contain the ICCPR that has the objective to protect economic, social and cultural right and the equal realization of the rights to physical and mental health of everyone in accordance to the best standard through a certain program in order to lessen the number of infant mortality, improve environmental hygiene, epidemic prevention and containment, endemic and guaranteeing medical service.

Principles contained therein concerns the following things (Reza, 2019):

1. The UN acknowledged and proclaimed principles that acknowledged equal dignity and rights among every human being that are inherent as the basis of freedom, justice and world peace.
2. Those rights are acknowledged by the existed dignity among everyone.

3. Acknowledged that the condition of right to freedom from fear and poverty can be realized should everyone had been able to enjoy civil, politic, economic, social and cultural rights.

Primary health care within the Almaata Declaration agreed for the goals that is “health for all the world’s people”, by the following principles (Haryanto, et.al., 2013):

1. Health service must be equal and spread evenly.
2. Health service must be accessible for the society affordable, effective, and efficient.
3. Health service shall include preventive, promotive, curative, and rehabilitative measure.
4. Private and society active participations is required by means of self-sufficiency within the society service.
5. Health service must also covers environmental, economic and other aspects.

The ICCPR has the objective to protect economic, social, and cultural rights and guaranteeing equality as a realization of physical and mental health rights of everyone in accordance to the best standard through a certain program in order to lessen the number of infant mortality, improve environmental hygiene, epidemic prevention and containment, endemic and guaranteeing medical service. T.Koopmans classified the concept of the development of Human Rights into 3 following categories (Perwira, 2001):

1. The first generation “*de klassieke grondrechten*” or the classic fundamental rights are Human Rights within the civil and politic aspects. The struggles in achieveing freedom form certain limitation leads to negative human rights characteristics
2. The second generation “*de sociale grondrechten*” or the fundamental social rights are more focused on Human Rights on economic, social, and cultural aspects, therefore, has positive characteristic(rights to).
3. The third generation “solidarity right” or can be considered as the Human Rights to the development of the people’s welfare.

The aforementioned classification are not fragmented by which might cause quality stratification. nevertheless, is to ease identification. Because the essence of Human Rights other than universal is also must be “indivisible and interdependent”. Human Rights to health are often classified as the second and third generation. If it were to be implied with individual health, thus, classified as economic, social, and cultural right. However, if it were to be implied with the society’s health, thus, classified as the right to development. The third right category according to Muladi is given the collective right based on human solidarity on fraternity that encompass inter alia “the right to development, right to peace, and the right to healthy and balanced environment” (Perwira, 2001).

Laws are considered to be ideal when the legal arrangement came from national identity that are religion and customs and non-discriminative. The emergence of ideal law amidst the society are made so that the same legal system will be acknowledged and will be obeyed by the society. Ideal laws start to exist and develops amidst the society. National laws contain regulations that are able to provide national security, provides protection and a safe situation, welfare and peace as well. Social justice for everyone must be the basis of

the aforementioned national law. Laws also needs to be in conformity with the development of era by conducting legal update as to accommodate such development. laws can carry out its role and function as a bureaucracy and society's development tools. Therefore, authority and society are able to develop inherently (Harahap, 2019).

The society's legal ideals became the basis of the emergence of ideal laws concepts (*Rechts idee*). Indonesian legal ideals are contained within Paragraph 4 of the 1945 Constitution preamble. Legal ideals are used as the state fundamental principle (*Staats Fundamentale Norm*). As the ideal legal concept, these legal ideals provide legal protection guarantee towards everyone as to realize social justice, enforce the essence of the sovereignty of the people and national unity under the Almighty God.

In regards to national welfare, bureaucracy empowerment is needed, law enforcement, facilities and infrastructures supervision for the greatest good of the nation to achieve welfare state. On other words, Ideal laws is not suffice to realize a welfare state (Harahap, 2019). Therefore, national legal development is highly required for a nation.

The meaning of national legal development are as follows (Syahnan, 2019): *First*, national law are the reflection of Indonesian people's values, facts, hopes and needs. Thus, developing national laws is supposed to be based on future hopes. The people's perspective are reflected from the values formed from the process of life, environment, history, customs, and religion. While on the other hand, hopes reflects desire that will be achieved now and dreams for the future. Therefore, developing national laws are supposed to be adjusted and balanced to the values, reality and hopes. History must not be forgotten in developing national law as to made the law to be actual and futuristic.

Second, national laws are supposed to be the reflection of laws that uphold justice and contribute to the realization of welfare and prosperity of everyone. This put the development of national law to be focused on the objective of law that are justice as well as to provide benefits for the greatest of the people. Therefore, developing laws in favour of particular group must be prevented.

Third, legal system and principle from colonial legacy that cause distinction among Indonesian needs to be updated. integration has been done within many regulation, however, might still cause conflict when it is being implemented on a concrete case. This might happen in case of the implementation of west principle or customs on a case. Moreover, conflict might occur between national law and customary law.

Fourth, as a part of the international society, adopting other country's law in developing national law is possible. This condition is highly possible due to the interaction between states and nations. The openness to accept foreign values and legal principles must be followed with a filter mechanism in order to filter values and legal principles that are not in conformity with the identity of the nation. These national legal development are in conformity with the function of law as the tool of social engineering as mentioned by Rosco Pound by which it emphasizes on the formation of a codified law as the basis of legal development as well as just verdicts made by judges.

The national legal development experience continuous changes with the hope to pursue justice, benefits and a better legal certainty. In Indonesia, the right to health pre amendment has yet been included within the 1945 Constitution as the history of the formation of the 1945 Constitution was born prior to the emergence UDHR on 10 December 1948. Nevertheless, the right to health was actually had been mentioned within the Constitution since the era of the United States of Indonesia Constitution of on 1949, on Article 40 of the United States of Indonesia Constitution stated "The rulers always make efforts earnestly to promote public hygiene and the people's health".

After the form of the state changes back into unitary state, the 1950 Temporary Constitution was put into force by which on Article 40 was adopted from Article 42 of the RIS Constitution (Perwira, 2001). Furthermore, the following amendment was conducted after applying the 1945 Constitution that are: 1st Amendment on 19 October 1999, 2nd Amendment on 18 August 2000, 3rd Amendment on 10 November 2001, and 4th Amendment on 10 August 2002.

According to Bagir Manan, citing Ismail Suny on Haryanto, et.al. (2013) stated that the regulation on Human Rights specifically can be realized on three following forms:

1. Intergrated within the 1945 Constitution by conducting amendment like the American Constitution including The Bill of Right in its I-X amendments.
2. MPR Decision, its drawback are that there is no sanction or criminal punishment towards its violations.
3. Laws incorporated with sanctions on its violations.

Human Rights in Indonesia are regulated within the three aforementioned regulations (Zalia, et.al., 2020).

The Regulation on Human Rights to health are contained therein after the second amendment and fourth amendment of the 1945 Constitution. The Chapter XA regulates about Human Rights, one of its concerns is the Right to Health (Isriawaty, 2015). The following are the regulations contained:

Article 28 H verse (1) stated:

Everyone are entitled the right to live in a physical and spiritual prosperity, to have a place to live and to have a good and healthy living environment and to have the right to health services.

Article 34 verse (2) and (3) stated:

Verse (2):

The state develops social guarantee system for everyone and empower weak and underprivileged people in accordance with human dignity.

Verse (3):

The state are responsible for providing appropriate health service facilities and public facilities.

There is a paradigm shift on health service from orienting medication or curative and rehabilitative into a more holistic one that are preventive, promotive, curative, and rehabilitative. These changes was indicated by the enactment of Law No. 36 of 2009 regarding Health that replace Law No. 23 of 1992 regarding Health that was considered to

be irrelevant with the development, demand, and legal needs of the society, therefore, was revoked and replaced with the newer aforementioned law. The health care paradigm in the current Health Law is comprehensive, integrated, and sustainable by which it includes promotive, preventive, curative, and rehabilitative measure.

Medical measures that are continuously being updated are influenced by other factors that move dynamically and complexly that are environmental, social and culture, economic, physical and biological environment factors. The government have done various measure that were followed by the private parties role, however, obstruction have yet ceased to exist in developing health sector. Such obstruction are inter alia, the insufficient health information sytem, unintegrated service, insufficient control and supervision towards an effective and efficient health system enforcement. While on the other hand, the doctor's fulfilment of the patients' right are still considered to be inadequate where the doctors are often practice not on time, limited medical information, inefficient medical service procedure that troublesome for the patients, and discrimination between the poor and wealthy in accessing health service does still exist (Hidayat, 2016). The health disparity, stigmatization, and discrimination are still being the problems in health sector.

Even though the equality and even distribution are continuously enforced, however, disparity and discrepancy between the actual circumstance and the utilization of health does still occur. Equality and even distribution are fundamental as to fulfil Human Rights to health for everyone. Equal treatment on a similar situation without distinguishing the amount of premium paid within the National Health Insurance. The service provided are optimal service. Disparity does not only occur on developing country, but also in developed country such as the US and West Europe disparity still occur.

Health Research on 2018 conducted by the Indonesian Ministry of Health stated that geographical and socio economical aspects contributes to the disparity on the accessibility of health service and environment does influence one's health. People living in urban area, West area of Indonesia, and middle upper social economic class have better condition compared to those who are living in rural area, East Indonesian area and middle lower social economic class (Candra, et.al., 2020).

Stigmatization and contradictive discrimination by equality principle that underlie Human Rights. Negative perspective or disgrace towards those who are considered to be wrong. Discrimination is an act of giving unjust different treatment. It is commonly occurred due to unawareness, denial and hypocrisy. The consequence of such act are causing rejection by the society, misery and stress, obstructing opportunities and increasing social discrepancy. In the contest of health, it will obstruct disease prevention, service obtainment, medication obedience and worsen health condition. One might abstain from having medical service caused by such occurrence, thus, might worsen and transmit their disease to others (Adiyanta, 2020).

Rejection on providing health service towards patients by considering their economy condition can be considered as Human Rights to health violation because the

Constitution on national legal development had guaranteed appropriate health service (Trostek, 2017). Human Rights are natural right owned as a human that are attached due to human's dignity and honour. Availability, affordability, obtainment and health service quality are prerequisite in order to achieve it. Disparity, Discrimination, stigmatization that still obstruct the development of health in Indonesia shall be prevented through accreditation as a mean of service standard fulfilment in Indonesia. Hospital accreditation is a measure to standardize hospitals by instruments that had been regulated by the government. Hospital accreditation used to be conducted by Hospital Accreditation Committee, however, the enactment of Job Creation Law shifted the authority to conduct hospital accreditation to Accreditation Commission that had been granted permission by the Ministry in accordance to instrument standard stipulated by the government (Astuti, et.al., 2021). Institutionalized and regulated health service conduct pattern can be done through hospital accreditation so that Human Rights to health can be guaranteed by considering that hospital accreditation is orienting on the patients' safety and the development of sustainable health service quality (KARS, 2017).

By including Human Rights to health within the Constitution or making it to be a positive regulation, thus, every violation of such right is considered to be a violation of the Constitution and can be legally punished (Hidayat, 2016). The Constitution acknowledged and consider health as one of fundamental rights or basic right that are attached to human as the God's creation naturally since a human were born that cannot be disputed. Therefore, as a Pancasila democratic legal state, is, responsible to fulfil Human Rights. The fulfilment of Human Rights in a Pancasila State is the implementation of the Pancasila's fundamental value as the nation's identity. The protection Human Rights are the objective and is prerequisite for Pancasila democracy (Hidayat, 2016). The enactment of health service to be included as a Human Right within the Constitution are in conformity with the significance of a Legal State as referred to in Article 1 Verse (3) of the 1945 Constitution by which it uses the term "*rechtsstaat*". the state guarantee the protection of Human Right by which contain the right to health service (Aswandi and Roisah, 2019).

The essence of legal state oblige the state conduct to be based on applicable law as to ensure justice for the citizens. It was meant to be a precautionary measure from abuse of power that might be done by the ruler and the consequences of such abuse of power (Muslih, 2013). Therefore, the objective of the law itself are obtainable.

The objective of law according to Gustav Radbruch in M. Muslih, 2012, and in Mario Julyano, Aditya Sulistiawan stated 3 following basic law objectives that are *Gerechtigkeit* (justice), *Zweckmassigkeit* (utility), *Rechtssicherheit* (legal certainty) (Julyano and Sulistyawan, 2019). Gustav Radbruch combined classic philosophy, normative and empiric perspective in a one main element approach that is known as fundamental legal values that are: justice (philosophical), legal certainty (Juridical), and utility for the society (sociological).

This perspective was initiated from the understanding that the society have a strong relation with order by which it can be likened to the two sides of a coin. Everyone or every

community needs order. The main instrument to achieve order is customs, decency, and legal norm itself that has the nature of binding (Muslih, 2013).

In case of a contradiction occur between those main instrument, Gustav Radbruch gave formal priority that are first is justice, second is utility, and the third is legal certainty. However, given the increasing complexity of the problems arose in the society within the development of caustic priority determination is considered to be the most relevant thought. The Amendment conducted to the 1945 Constitution, according to Mahfud MD in M. Muslih, based on the main instrument provided by Gustav Radbruch by which the existence of legal certainty is used to guarantee the realization of justice (Muslih, 2013).

According to Moctar Kusumaatmadja, the objective of law is justice by which has different the content might vary for the society and era. While on the other hand, legal certainty within the society is a tool to achieve order, whereas human cannot develop their talent maximally without order. Thus, legal certainty and legal order are very important, however, law is a tool of social engineering (Mulyadi, 2002). Whereas, the function of law according to Bernard Arief Sidharta is to be a dispute settlement method, social order (social controller), and as a social engineering tool (Fitriana, 2015).

The regulation on Human Rights within the Laws, Second Amendment and Fourth Amendment of the Constitution, MPR Decision, indicates that law is a tool to pursue public order and as a tool to regulate or to promote Human Rights development (Mulyadi, 2002). Health service will be just if, is, appropriately provided by the state and is accessible for the society without discrimination. Whereas, in order to guarantee the legal certainty of the implementation and enforcement of the objective of law, therefore, codified law is prerequisite.

The International Commission of Jurist stated the following principles and characteristics of a state (Udiyo, 2020):

1. State must obey the law
2. The government must respect individual rights
3. Impartial and free tribunal

The development of Pancasila Law is based on the law that lives within the society. Based on Primordial value of the nation that puts the value of Pancasila to be the ontological, epistemological and axiological basis. Law as a compulsory product based on Pancasila's legal principles inter alia: *First*, The principle of The Almighty God, No legal products reject or in contrary to religion and beliefs to the Almighty God. *Second*, the principle of Humanity, human dignity and honour must be upheld and protected. *Third*, The principle of unity or nationality, Indonesian law unites diversities and unites different life, and uphold *kebinekaan* as the identity of the nation. *Fourth*, The principle of democracy that is based on laws and authority, where law must prevail, not authority. The value of democracy is based on deliberation, prudence, and wisdom. *Fifth*, The principle of Justice by which mandated equality before the law. Therefore, Pancasila is the fundamental basis of every Indonesian law (*grundnorm*) (Farida, 2016).

Human, a structure of physical and spiritual nature, individual and social creature, the Almighty God's creation, is a unity of organised and harmonic elements. That is the ontological basis of the Pancasila by which it puts the aforementioned elements as a unity (Farida, 2016).

The epistemological basis of the Pancasila is the human's knowledge, the theory of human truth and human nature. The epistemological basis of Pancasila considers that the level of knowledge in a human's life is inherent as it must be based on the nature of human morality and religious morality.

The Axiological basis of Pancasila are that each one of the *sila* contained therein are a unity and does not contradict from one to another. The *sila* of the Almighty God is the highest and absolute *sila*. While the other *sila* were hierarchically structured (Farida, 2016). Religious, humanity, national unity, populist and social justice value as a unity shall be the inspiration, trajectory, and guide to national laws (Ali, 2016).

Pancasila is considered to be the goal of Indonesian laws and views of life. Goal is a notion, intention, and thoughts on laws that encompass three elements that are justice, benefit, and legal certainty. Sidharta stated that the formation of a legal goals within thoughts and human's heartstrings is a product of view of life integration that is fermented through the process of code of conduct making that is applicable within the society by realizing the aforementioned legal goals (Ali, 2016).

By considering that Pancasila is the legal goal and the nation's view of life, therefore, legal development, formation, and enforcement must be guided by the value of Pancasila. However, at the same time, , the adoption of global value in the globalization era is highly possible to be done as long as it is in conformity with the values contained within the Pancasila. The significance of laws are not to be considered as a codified set of norms in the form of laws, nevertheless, represents values contained therein (Soedarso, 2006).

Value according to Ricard Bender is the achievement of several experience on values that will keep increasing. These experiences will satisfy a comprehensive and integrated needs. While according to Findlay, value is the synonym of kindness, supremacy, liked things and others that are related to things, situation, and particular circumstance. Whereas, every basis of these things is obtained from values (Ali, 2016).

The actualization of Pancasila needs to form laws that regulates Human Rights to health service that is evident and enforceable. However, even though Pancasila has a prominent role in the formation of laws, the method to determine whether a law has been adjusted to be in conformity with the Pancasila has yet been owned by this nation. The indicator and variable in regards to the values of Pancasila that must be actualized within the laws as the consequence of Pancasila being the source of every law is logical and essential. Every formation of laws is obliged to be imbued with Pancasila. Eventually, essential things that must be done in the development of laws in the field of health is ensuring that the values of Pancasila are imbued within the health regulations (Arfa'i, et.al., 2020).

It is undeniable that there are several laws that has yet been adjusted to be in conformity with the Pancasila within the current legal development. Based on the National Legal Development Agency (BPHN) evaluation data procured on 2019, found four out of nine laws that are considered to be problematic. Furthermore, the National Pancasila Ideology Development Agency (BPIP) on the same year, found 63 out of 84 laws that requires revision as those laws are in contradiction with the values of Pancasila. Whereas, according to the Constitutional Court, since 2003 until January 2020, there are 264 material test requests that have been granted. The request granted by the Constitutional Court can be indicated that those laws contain provision by which are contradictory with the Constitution, where the Constitution is derived from Pancasila as the source of every law (Arfa'i, et.al., 2020). If we were to recall the aforementioned events, there are several inefficiencies on the expenditures in regards to the process of revoked laws' enactment.

The aforementioned data shows the importance of attention on the process of law formation as to ensure that the values of Pancasila to be contained therein. It is a must as the consequence of Pancasila being the source of every Indonesian laws. Therefore, the actualization of the development of Human Rights to health law are supposed to prioritize the following things: *First*, put Pancasila as the source of every national law, as referred to in Article 2 of Law No. 12 of 2011 by which on its elucidation explained (Arfa'i, et.al., 2020):

The placement of Pancasila as the source of every Indonesian law is in conformity with Paragraph 4 of the 1945 Constitution Preamble by which are the Almighty God, just and civilized humanity, Indonesian unity, democracy led by wisdom in deliberation/representation, and social justice for every Indonesian. Placing Pancasila as the state basis and ideology and philosophical basis of the state as to prevent any codified laws to be in contrary with the values contained in the Pancasila.

Second, the guidelines in the making of academic script are also adhering to Pancasila. The making of academic script has yet had corner stone, indicators, and variables of Pancasila's values. The inclusion of *sila* of the Pancasila cannot be considered to be sufficient as what academic scripts require are much deeper rather than merely including *sila* in the Pancasila, is values contained within the Pancasila by which provides fundamental basis on the enactment of laws that are made in academic scripts.

Third, the adjustment measure on a bill of law requires to implement Article 51 Verse (4) number 1 of the Presidential Decree No 87 of 2014 by which mandated to put Pancasila, 1945 Constitution and other enacted laws into account in the bill of law. However, the aforementioned Presidential Decree has yet been complied with by mentioning Pancasila's values adjustment indicators.

Fourth, the mechanism and technical substance in the making of a law bill must be adjusted to the Pancasila. Article 64 verse (2) of Law No. 12 of 2011 stated that the attachment II that contains technical procedure on the making of law is an inherent part that cannot be apart from the aforementioned law. Fundamental thing contained within the attachment are that the recital of law that contains philosophical, sociological and juridical elements. Philosophical element represent that the laws are made by considering

the nation view of life, awareness, and legal goals that are based on the Pancasila and the Preamble of the 1945 Constitution. The inclusion of such thing can be considered to be equal with stating that Pancasila is the philosophical basis of a academic manuscript of a bill of law.

Fifth, Pancasila as a principle, is the source of every Indonesian law by which put the principle of the Almighty God into account. In the context of legal development in the field of health where the right to health is a human right as it is gift from the God the creator, therefore, every aspect of legal development must be sourced from the Pancasila.

The essence of the aforementioned opinion in regards to value, is, depends on the human himself who own something to consider something that human judged on and these something is regarding to better things according to his experience.

Provisions contained within the 1945 Constitution has been elucidated by Law No. 36 of 2009 regarding health. In this particular law, it is stated that health is a human right by which included as a part of welfare and must be realized as referred to in the Pancasila and the 1945 Constitution. Furthermore, Health Law also stated that everyone are entitled to health in the form of obtaining health service through health facilities in order to realize the greatest of health quality.

Moreover, there are several things that are regulated under the health law regarding the right to health where at least encompass as follows:

1. Equal rights for everyone to obtain affordable, standardized, and safe health service.
2. Equal rights for everyone to obtain access towards medical resources
3. The right to be independent and responsible to determine his own required health service.
4. The right to obtain healthy environment in order to achieve standardized health quality
5. The right to obtain health related information including available medical treatment and medication as well as that will be received by health workers.
6. The right to obtain equal and accountable information and education related to health.

The 2025 – 2045 National Legal Development vision are effective, efficient, and innovative laws that will promote and guide national development as to obtain 2045 Indonesian Vision (Kemenkes, 2020). The missions that will be carried out are as follows:

1. Establish legal substance that are based on the values of Pancasila by which are responsive and anticipative towards various technology development as well as its implementation by adhering to a good implementation of such regulation that are in accordance with international standard as well as the needs and characteristics of Indonesia.
2. Establish a sturdy legal structure that are able to promote an efficient and effective enforcement.
3. Establish a strong legal culture that are embedded in the apparatus' and society's conscience that aims to a high legal awareness that upholds legal ethics and are service oriented.

4. Establish legal facilities and infrastructure that are able to promote legal substance development by which will be realized through accessible, comprehensive, and integrated legal information technology endorsement.

Several obstructions that may hinder the aforementioned legal goals and function in the development of Pancasila Law are as follows:

1. Positive legal substance that has yet been harmonized, thus, causes enforcement difficulties and legal uncertainty
2. There are several current positive laws that got complained as some of them were made without sufficient consideration upon the society needs.
3. On the legal structure component, the weak legal enforcer institution contributes to the bad image of laws before the society.

The objective of the state to protect the Indonesian and to promote common welfare through National Social Insurance which includes the National Health Insurance as a part of it. The National Health Insurance is a realization of human rights in the field of health. Hospital accreditation standard is prerequisite in the development of legal substance, the legal structure and legal culture. The hospital accreditation standard must be orienting on patient safety and sustainable quality enhancement (BPK, 2021).

Hospital Accreditation Post Law Number 11 of 2020 regarding Job Creation

Everyone is entitled to receive a safe, affordable and good quality health service. Health workers' mistakes or negligence in carrying out their duty might jeopardize the patients. Therefore, a certain standard that is used as a guidance in providing health service toward patients is required. The standard shall encompass service process and service output. Hospital accreditation is strongly related with the quality of a hospital as the expected output from hospital accreditation is the safety of patients and sustainable quality enhancement (Hidayat, 2016).

If the right to health is considered to be human rights that are embedded in every human as their nature of the Almighty God's creation, thus, the implementation of such right must be based on a certain standard. Article 5 Verse (2) of Law No. 36 of 2009 regarding health stated "everyone has the right to obtain safe, affordable, and good quality health service".

According to National Patient Safety Agency (2017) within the time period of January-March 2017, found 460.862 incidents in England, there are 76.621 patient accident incident or 17% from the aforementioned number. The patient safety incidents encompass of Unwanted Occurrence (KTD), Near Injury Occurrence (NC), Non-Injury Occurrence (KTC) and Potential Injury Occurrence (KPC). Research conducted by Najihah (2018) in regards to the culture of patient's safety is strongly related with the aforementioned incidents. One of the available measures to reduce these things to occur is by conducting patient's safety incidents reports. However, several health workers tend to neglect incident reports with the grounds that the incident are still under control (Purwaningtyas and Prameswari, 2017).

According to Mandawati (2018) in regards to the impact of hospital accreditation qualitative study on nurses at RUSD KRT Setyonegoro Wonosobo shows respondents result which stated that accreditation is an important thing to do as it brings positive impacts by which is to develop nurses empathy on the patient's safety indicator by revising the incident report flow, Standard Operating Procedure adherence, communication between health workers, documentation, service facilities, health education, work environment and sustainable education (Purwaningtyas and Prameswari, 2017).

Accreditation has a strategic role in ensuring service quality and the patient's safety. Furthermore, there is a paradigm that requires prudence behavior in health insurance system. On the other hand, health financing has undergone a revolution from fee for service system to INA CBGs financing system (Purwadi, 2019). The fee for service financing system is a type of financing system by which its amount of fee is determined by the number of service provided, whereas, the INA CBGs prioritize service bundle based on the disease diagnosis group. The implication of INA CBGs financing system are as follows:

1. Health cost control
2. Promoting high quality health service
3. Providing parameters for unnecessary service
4. Easier claim administration
5. Inducement for the provider to conduct cost control

This shift of paradigm demands changes in behavior on establishing health service in the hospital. This shift of paradigm is facing on the hospital and health workers' responsibility to provide health service in accordance with the patients' needs. Meaning that the per diagnosis bundle financing method might face problems in case of there are fewer number of claims compared to the amount of financing required for patient handling by considering medical needs. In this particular circumstance, legal principle as the institutionalized behavior pattern, is, to be adhered to by the hospital and health workers.

Hospital accreditation is a form of government acknowledgement through Hospital Accreditation Agency where hospitals met a certain standard stipulated by the government. By considering the complexity of health service implementation in the hospital, thus, accreditation is required in order to ensure the service quality and patients' safety. Therefore, the objective of implementing safe, affordable and high-quality health service is achievable.

The main actor of health establishment as a human right is the state. In its implementation, the state formed the National Social Insurance System(SJSN) by which it consist of the National Health Insurance (JKN). The Health Insurance is established by forming the Health BPJS. In providing health insurance towards the member of Health BPJS, is, cooperating with First Level Health Facility (FKTP) that consist of family doctors, primary clinic, and public health center. Furthermore, cooperating with Advanced Level Health Facility in the form of state-owned hospital, regional government owned hospital, and private owned hospital.

According to Ali Ghufron Mukti at the Webinar in regards to Hospital Strategy in Facing Standard Class Implementation that is Administered by MMR UGM Alumni Association, February 7, 2022 stated the following Health BPJS regulation's trajectory:

1. Stipulating utility packet
2. Stipulating health service fee standard
3. Stipulating health facility payment mechanism
4. Stipulating participants who receive dues assistance

The participants of the Health Insurance until December 2021, 86.59% of 272.228.372 Indonesian citizen. With the utilization of health facility in 2019 used 1.1 billion rupiah per day. Whereas, FKTP by which cooperates with Health BPJS for 23.608 health facility and FKRTL by which cooperates with Health BPJS for 2.810 hospitals. With the health service cost proportion of 83% on referral service facility and 17% on primer service.

Therefore, 6 main priorities of the Health BPJS on 2022 as the implementor of the National Health Insurance are as follows:

1. Enhancing service quality
2. Broaden participation to enhance the scope
3. Maintaining the National Health Insurance financial sustainability
4. Enhancing stakeholders' engagement and strengthening organizational communication
5. Enhancing institution capability
6. Optimizing special assignment mandated by the government.

Therefore, Hospital as the main actor of health service must maintain its service quality and patients' safety through hospital accreditation.

In the post Job Creation Law era, there are 5 laws in regards to health that were affected by the enactment of the Law No. 11 of 2020 regarding Job Creation. The first recital on letter e of Law No. 11 of 2020 regarding Job Creation stated that legal invention is required to settle any disputes within the applicable laws by compiling those laws comprehensively. Furthermore, all of them are intended for Indonesian governmental establishment and to realize prosperous and just Indonesian citizen based on the Pancasila and 1945 Constitution.

Whereas, in regards to the Health Law and Hospital Law inter alia medical health service shall not be imposed VAT. Furthermore, health service providence does not only available for health workers and health worker assistants, however, oblige hospitals to undergo accreditation once every three years. In regards to the aforementioned things, the government has the role to regulates the practice of health service at the hospital through guidance and supervision for the hospitals, as to prevent the hospital from making unjust provisions that might jeopardize health workers' interest and to ensure the society to be able to obtain appropriate health service that are in conformity with the applicable laws, competence, and Standard Operational Procedure. The government has vital role in regards to post Job Creation Law health service providence, these vital roles are as follows (Rafi, 2021):

1. Guidance and supervision towards regulations on health service practice at the hospital by involving profession organization, hospital association, and civil society as to achieve the following:
 - a. The fulfilment of affordable health service for the society
 - b. Enhancement of health service quality
 - c. Patient's safety
 - d. Enhancement of service scope
 - e. Enhancement of hospital independency
2. The loss suffered by health workers caused by unjust provision is to be minimalized. There is administrative remedy mechanism as its alternative settlement. Whereas, for private hospital is conducted by the role of central and regional government to supervise.
3. Service certainty provided towards the society is to be in conformity with quality standard. This is conducted by implementing minimum qualification for health workers and health service provider. The qualification shall be proven through permits granted by the government in the form of Practice Permit License (SIP) and Registration License (STR). Whereas, for health service providers to be considered as eligible is by fulfilling the requirements as referred to in Public Service Law.

Conducting accreditation once every three years is one of the hospital's obligations as referred to in the Job Creation Law.

Article 61 of the Job Creation Law revoked and amended the Law No. 44 of 2009 regarding Hospital on Article 24 verse (2), Article 29 verse (3), Article 40 verse (4), Article 54 verse (6).

1. Article 24 verse (2) regarding hospital classification, was used to be regulated by the Health Ministry Regulation No. 3 of 2020 regarding Hospital Permits and Classification.
2. Article 29 verse (3) regarding Hospital's Obligation, was used to be regulated by Health Ministry Regulation No. 4 of 2018 regarding Hospital's Obligations and Patient's Oblitgations.
3. Article 40 verse (4) regarding Hospital Accreditation, Guidance, and Supervision, was used to be regulated by the Health Ministry Regulation No. 12 of 2020 regarding Hospital Accreditation.
4. Article 56 verse (6) regarding administrative sanction imposition procedure, was used to be regulated by Health Ministry Regulation No. 18 of 2018 regarding Supervision on the Field of Health and other various laws in the field of Hospital.

According to Article 1 verse (2) of Governmental Regulation No. 47 of 2021, Hospital Accreditation is the acknowledgement of hospital's service quality. Accreditation standard is adjusted to be in conformity with national programs and applicable laws. Furthermore, the accreditation must be conducted in accordance with the standard approved by the Ministry of Health. Accreditation standard consists of achievement level guidance that must be complied with by Hospitals in order to enhance health service quality and patients' safety.

Accreditation includes the following activities:

1. Accreditation preparation
2. Accreditation implementation consisting of accreditation survey and accreditation status stipulation
3. Activities post accreditation are conducted by the Hospital through strategic improvement by which is conveyed to Accreditation Agency. Furthermore, in order to sustain and enhance service quality post accreditation, the hospital must convey national health service quality indicator fulfilment and patient safety incident reports towards the ministry.

The Central Government and Regional Government promotes both state-owned and private hospital accreditation. The objective of promoting hospital accreditation are as follows:

1. Affordable health service fulfilment for the society
2. Health service quality development
3. Patients' safety
4. Service scope enhancement
5. Hospital independency capabilities development

In order to guide and supervise, central government are able to impose administrative sanction such as:

1. Reprimand;
2. Written reprimand;
3. Fine and/or;
4. Hospital permits revocation.

Regulation on Accreditation post the enactment of Law No. 11 of 2020 regarding Job Creation has fulfilled legal substance, legal structure, and legal culture improvement. Appropriate health service will be realized should these things can be conducted thoroughly by every stake holder.

Through Law No. 47 of 2021 regarding The Implementation in Hospital Sector, the objective of law by which is to obtain justice, certainty, and benefit is achievable. Furthermore, the short term, middle term, and long term function of law is to generate sustainable legal culture that is in accordance with the values living within the society.

Conclusion

- a. The state obligation to provide appropriate health facilities. Hospital accreditation post the enactment of Job Creation Law provides more legal certainty in regards to the availability of appropriate health facilities through the fulfilment of accreditation standard.
- b. Setting Hospital accreditation to be the work culture of hospital is important as to implement high quality health service in order to realize Pancasila Law Development.

Suggestion

- a. The state obligation to provide appropriate health facility can be realized through the fulfilment of quality development and patient's safety instrument.
- b. In order to achieve the objectives of law, thus, accreditation is to be the legal culture of every hospital stake holder and must not only be done to acquire accreditation certificate.

References

- Adiyanta, FC. Susila. (2020). Urgensi Kebijakan Jaminan Kesehatan Semesta (Universal Health Coverage) bagi Penyelenggaraan Pelayanan Kesehatan Masyarakat di Masa Pandemi Covid-19. *Administrative Law and Governance Journal*. 3(2). 272-99. <https://doi.org/10.14710/alj.v3i2.272-299>.
- Ali, Mahrus. (2016). Fondasi Ilmu Hukum Berketuhanan: Analisis Filosofis terhadap Ontologis, Epistemologi dan Aksiologi. *Pandecta*. 11(2). 124-135. DOI: <https://doi.org/10.15294/pandecta.v11i2.7844>
- Arfa'i., Nasution, Bahder Johan. and Febrian. (2020). Aktualisasi Pancasila Sebagai Sumber Hukum dalam Pembentukan Undang-Undang. *Undang: Jurnal Hukum*. 3(2). 377-407. <https://doi.org/10.22437/ujh.3.2.377-407>.
- Aswandi, Bobi. and Roisah, Kholis. (2019). Negara Hukum dan Demokrasi Pancasila Dalam Kaitannya dengan Hak Asasi Manusia (HAM). *Pembangunan Hukum Indonesia*. 1(1). 128-45.
- Badan Pemeriksa Keuangan (BPK). (2021). *Benahi Penyelenggaraan Jaminan Kesehatan Nasional*. 2nd ed. Vol. IV. Jakarta.
- Candra, et.al. (2020). *Hasil Penelitian Kebijakan Evaluasi Jaminan Kesehatan Nasional 2019 Di Provinsi Riau: Studi Kasus Hipertensi Dengan Data Sistem Kesehatan (DaSK)*. Yogyakarta: Pusat Kebijakan dan Manajemen Kesehatan Fakultas Kedokteran Kesehatan Masyarakat dan Keperawatan Universitas Gadjah Mada.
- Farida, Any. (2016). Teori Hukum Pancasila Sebagai Sintesa Konvergensi Teori-Teori Hukum di Indonesia. *Perspektif: Kajian Masalah Hukum dan Pembangunan*. 21(1). 60-69.
- Fitriana, Mia Kusuma. (2015). Peranan Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia Sebagai Sarana Mewujudkan Tujuan Negara. *Jurnal Legislasi Indonesia*. 12(2). 1-27.
- Haryanto, Tenang. Suhardjana, Johannes. Komari, Ahmad. Komari, Fauzan, Muhammad. and Wardaya, Manunggal Kusuma. (2013). Pengaturan Tentang Hak Asasi Manusia Berdasarkan Undang-Undang Dasar 1945 Sebelum dan Setelah Amandemen," *Jurnal Dinamika Hukum*. 8(2). 138-150, <https://doi.org/10.20884/1.jdh.2008.8.2.54>.
- Hidayat, Eko. (2016). Perlindungan Hak Asasi Manusia Dalam Negara Hukum Indonesia. *Asas: Jurnal Hukum dan Ekonomi Islam*. 8(2). 80-87. <https://doi.org/10.24042/asas.v8i2.1249>
- Hidayat, Rifatul. (2016). Hak Atas Derajat Pelayanan Kesehatan Yang Optimal. *Syariah Jurnal Hukum Dan Pemikiran*. 16(2). 127-134. <https://doi.org/10.18592/sy.v16i2.1035>.

- Isriawaty, Fheryal Sri. (2015). Tanggung Jawab Negara dalam Pemenuhan Hak Atas Kesehatan Masyarakat Berdasarkan Undang Undang Dasar Negara Republik Indonesia Tahun 1945. *Jurnal Ilmu Hukum Legal Opinion*. 3(2). 1–10. <https://media.neliti.com/media/publications/145729-ID-tanggung-jawab-negara-dalam-pemenuhan-ha.pdf>.
- Julyano, Mario. and Sulistyawan, Aditya Yuli. (2019). Pemahaman terhadap Asas Kepastian Hukum melalui Konstruksi Penalaran Positivisme Hukum. *Jurnal Crepido* 1(1). 13–22. <https://ejournal2.undip.ac.id/index.php/crepido/>.
- KARS. (2017). *Standar Nasional Akreditasi Rumah Sakit Edisi 1*. Jakarta.
- Kemendes, RI. (2020). Rencana Aksi Program Sekretariat Jenderal Tahun 2020-2024. *Jurnal Ilmiah Teknosains*. 2.
- Lubis, Sartiani. Hutabarat, Melani. and Nasution, Muhammad Rifan. (2019). Undang Undang Dasar 1945. 4(1). 1-12. <https://doi.org/10.31227/osf.io/498dh>.
- Mardiansyah, Rico. (2018). Dinamika Politik Hukum Dalam Pemenuhan Hak Atas Kesehatan di Indonesia. *Veritas et Justitia*. 4(1). 227-251, <https://doi.org/10.25123/vej.2918>.
- Mohamad, Irwansyah Reza. (2019). Perlindungan Hukum Hak atas Hak Mendapatkan Pelayanan Kesehatan ditinjau dari Aspek Hak Asasi Manusia. *Akademika Jurnal Ilmiah Media Publikasi Ilmu Pengetahuan dan Teknologi*. 8(2). 78–94.
- Mulyadi Lilik. (2002). Teori Hukum Pembangunan Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M. https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/kajian_deskriptif_analitis_teor_i_hukum_pembangunan.pdf
- Muslih, Mohammad. (2013). Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch. *Legalitas*. 4(1). 130–152.
- Mustika, Astuti. Abdilah, Safiqulatif. Sumartono, Adi. and Riyanto, Arif. (2021). Kesesuaian Asesmen Pasien dalam Rekam Medis Elektronik dengan Standar Nasional Akreditasi Rumah Sakit Edisi 1.1. *The Journal of Hospital Accreditation*. 3(2). 119–23. <https://doi.org/10.35727/jha.v3i2.104>.
- Nandarj, Anagha Khot Sunil. (2003). Accreditation System for Health Facilitie. *Economic and Political Weekly*. 38(50). 2551.
- Perwira, Indra. (2001). *Memahami Kesehatan Sebagai Hak Asasi Manusia*. Jakarta: Pusat Dokumentasi ELSAM.
- Purwadi, Kana. (2019). Efektifitas Penerapan INA-CBG Di Rumah Sakit (Analisis Penerapan Permenkes RI No. 76 Tahun 2016 Tentang Pedoman Indonesian Case Base Groups (INA-CBG) Dalam Pelaksanaan JKN Di Rumah Sakit Emanuel Banjarnegara). *Jurnal Idea Hukum*. 5(2). 1475–1490. <https://doi.org/10.20884/1.jih.2019.5.2.121>.
- Purwaningtyas, Melorys. and Prameswari. Galuh. (2017). Tinjauan Sistem Manajemen Keselamatan Dan Kesehatan Kerja Pada Akreditasi Rumah Sakit. *Higeia Journal of Public Health Research and Development*. 1(3). 625–634.
- Rafi, Rabbani Deden. (2021). Peranan Dan Tanggung Jawab Pemerintah Dalam Pelayanan Kesehatan Pasca Berlakunya UU Cipta Kerja. *Jurnal Supremasi Hukum*. 11(1). 191–200.
- Samekto, FX. Adji. (2019). Menelusuri Akar Pemikiran Hans Kelsen Tentang Stufenbeautheorie dalam Pendekatan Normatif-Filosofis. *Jurnal Hukum Progresif*. 7(1). 1-19. <https://doi.org/10.14710/hp.7.1.1-19>.

- Soedarso. (2006). Pengembangan Sistem Filsafat Pancasila. *Jurnal Filsafat*. 39(April). 42-56. <https://journal.ugm.ac.id/wisdom/article/download/23215/15306>.
- Syahnan, M. (2019). Konsepsi Hukum Yang Ideal Bagi Negara Kesatuan Republik Indonesia. *Media Online ISSN 2656-4041* 10(1). 81-86.
- Trotsek, Dylan. (2017). Tanggung Jawab Negara terhadap Jaminan Kesehatan dalam Perspektif Hak Asasi Manusia. *Journal of Chemical Information and Modeling* 110, no. 9 (2017): 1689-1699.
- Udiyo, Basuki. (2020). Merunut Konstitusionalisme Hak Atas Pelayanan Kesehatan Sebagai Hak Asasi Manusia. *Jurnal Hukum Caraka Justitia*. 1(1). 21-41.
- Zalia, E. et al. (2020). Tanggung Jawab Negara Hukum Demokrasi dalam Penyelenggaraan Pelayanan Kesehatan. *Orphanet Journal of Rare Diseases*. 21(1). 1-9. <https://doi.org/10.1155/2010/706872>.