

ANTINOMY OF INTELLECTUAL PROPERTY RIGHT, HUMAN RIGHT TO HEALTH AND HEALTH DEVELOPMENT IN INDONESIA

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Abstrak:

This study examines intellectual property rights, human rights to Health, and health development in Indonesia after COVID-19. In this study, the type of research used is normative legal research using legal material collection techniques in document studies or literature studies. The approach used in this study is statutory, and the sources of legal materials used are primary, secondary, and tertiary. The results showed that Health is a fundamental need of every individual, family, and society, which the Constitution protects. The founders of the Unitary State of the Republic of Indonesia (NKRI) also understood the importance of Health for the life of the nation and state. Health efforts in Indonesia adopt a modern health and medical system whose user community background is Western socio-cultural. On that basis, there are many obstacles to developing health care and treating and healing diseases when served to the people of Indonesia. Health is a subsystem of National Resilience because it must involve other subsystems through interaction, interrelation, interdependence, and independence to achieve national Health.

INTRODUCTION

Health is a fundamental need of every individual, family and society, which the Constitution protects. The Constitution explicitly stipulates that Article 28 paragraph (1) stipulates "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 health services" (Aji & Yunus, 2018). The founders of the Unitary State of the Republic of Indonesia (NKRI) also understood the importance of Health for the life of the nation and state. It can be seen from the points of the elaboration of the second principle of Pancasila, namely in points 1 and 2 "Recognizing and treating humans according to their dignity and worth as creatures of God Almighty (point 1); Recognizing equality, equality of rights, and human obligations of every human being, without discriminating against ethnicity, descent, religion, belief, gender, social position, skin color and so on (point 2) (Buana, 2020). The philosophical basis stated above is further elaborated in the 1945 Constitution of the Republic of Indonesia (from now on referred to as the 1945 Constitution of the Republic of Indonesia) and various health laws and regulations that apply in Indonesia (Manan, 2009).

The coronavirus outbreak with the type of SARS-Cov-2 virus, which was first detected in Wuhan, China, has now spread widely to all parts of the world, as it is known that SARS-Cov-2 is not a new type of virus. The SARS-Cov-2 virus results from an old virus mutating to form a new genetic makeup; in short, the virus remains the same type and only changes identities. This virus is named SARS-Cov-2 because the coronavirus is genetically closely related to the viruses that cause SARS and MERS (Ridlo, 2020).



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Covid-19 was originally only an outbreak in Wuhan, and it did not take long to transform into a pandemic troubling the whole world. After the coronavirus managed to infect more than 118,000 people in 114 countries and caused 4,291 people to die, the World Health Organization (WHO) finally declared the coronavirus outbreak a global pandemic (Ciotti et al., 2020). In Indonesia, the first confirmed cases of coronavirus infection were announced on March 2, 2020. After that incident, the number of positively infected patients continued to grow. Currently, people are not only hit by anxiety but suffer from extraordinary panic (Nurhalimah, 2020).

The public's excessive panic over this global pandemic does not escape the Government's attitude, which tends to be sluggish. One of the Government's inactions can be seen in the Government's inattentiveness in forming the National Task Force for Combating the Corona Virus (Gostin, 2001). The central Government just finished forming the team on March 14, 2020, which means the Government took almost two weeks to form a team to deal with the virus. It has prompted local governments to take mitigation steps without involving the central Government. A new polemic has emerged because, based on the applicable law, the handling of this global pandemic is under one coordination, and the central Government is in charge of determining policies (Hidayat, 2017).

Even after the coronavirus infected the people of Singapore, the Government has not taken any preventive measures other than checking scanners at the airport. At that time, the Government only appealed to the public to be aware of the virus. Instead of actively tracking cases of the spread of the coronavirus in the community, the Government seems to feel safe from the virus outbreak that has infected more countries than some countries today (Asyhadia, 2018).

Health efforts in Indonesia adopt a modern health and medical system whose user community background is Western socio-cultural. On that basis, there are not many obstacles in the development of Health and treatment and healing of diseases when served to the Indonesian people because their natural knowledge is integrated into their supernatural knowledge, which differs significantly from the values and norms of Western society (Hadisiwi & Seminar, 2017).

In recent developments, the National Health System was strengthened by the Law of the Republic of Indonesia No. 23 of 1992 concerning Health, later refined in the Law of the Republic of Indonesia No. 36 of 2009 concerning Health. The last law states: "Health development is based on humanity, balance, benefits, protection, respect for rights and obligations, justice, gender and non-discrimination and religious norms. It aims to increase awareness, willingness, and ability to live a healthy life so that everyone realizes the highest degree of public Health as an investment for developing socially and economically productive human resources" (Pasaribu & SKM, 2015).

The health development strategy in Indonesia refers to the scope and quality of Health that is coveted. The reference is the definition of healthy that has been determined by the Government as stated in the Law of the Republic of Indonesia No. 36 of 2009 concerning Health, that a healthy state includes physical, mental, spiritual and social, which allows everyone to live a productive life socially and economically. This understanding comes from the definition compiled by the World Health Organization (WHO) from 1980 to 1998: "Health is a state of physical, mental and social wellbeing and not merely the absence of disease or infirmity." Meanwhile, from 1999 to 2002, WHO expanded the definition of Health to include emotional and spiritual Health. It reads: "Health is a state of physical, mental, social, emotional and spiritual wellbeing and not merely the absence of disease or infirmity."

Health is a National Resilience subsystem because it must involve other subsystems through interaction, interrelation, interdependence, and independence to achieve national Health. The foundations are: (1) Citizens have the right to optimal Health in order to live a decent life; (2) The



Government and society are responsible for maintaining Health; (3) The implementation of health efforts is regulated and carried out by the Government and the community in an integrated manner; (4) Based on the values of God Almighty, humanity, the interests of the people, unity and not unity or individuals; (5) kinship and cooperation for health development; (6) Fair and equitable; (7) Citizens must uphold health regulations; and (8) Health Development based on the nation's personality. Based on this, the author is interested in discussing the anatomy of intellectual property rights, human rights to Health and health development in Indonesia after COVID-19 (Tumanggor, 2010).

METHODS

In this study, the research method used is normative juridical research. The normative juridical method is where the law is conceptualized as what is written in legislation (law in books), or the law is conceptualized as a rule or norm, which is a benchmark for human behavior that is considered appropriate (Mustari & Rahman 2012). This method aims to find the truth of the logic of legal science based on its normative side. The approach used is the statutory approach. The data used in this study were sourced from secondary data. The data was obtained through a literature study using primary, secondary, and tertiary legal materials. This study uses a technique of collecting legal materials, namely document study techniques. The processing of legal materials is deductive and analyzed using a description technique, namely by describing primary and secondary legal materials (Wiratmaja et al., 2020).

RESULT AND DISCUSSION

As an event or series of complex activities in finding the law and applying legal regulations to legal decisions, applying the principles of procedural law in each stage of legal discovery activities is generally inseparable from one another, not even sequentially and often antinomies occur in it. Fockema defines antinomy as a conflict between two or more rules whose solution must be sought using interpretation. Antinomies are two different but complementary things; therefore, in dealing with antinomies, it is required to create a balance between the two provisions (Farnsworth, 2003).

Furthermore, Friedman emphasized that the occurrence of antinomy is because, based on theory, law is between legal philosophy and political science. It is because the function of legal politics is to choose values and apply them to the law that is aspired to, while legal philosophy is a reflection and formulation of legal values. As a result of legal theory lying between legal philosophy and legal politics, new problems arise, which, on the one hand, are related to philosophy and the other side is related to conflicting politics (Kurnia, 2007).

There is also an antinomy because civil law has a value, namely between the value of freedom and the value of order. On the one hand, there is freedom of contract; on the other hand, there is a desire for order or attachment. The antinomy between legal certainty and the value of comparability or proportionality. On the one hand, it wants certainty; conversely, it is proportional or depending on time and place. The antinomy between the value of obedience and flexibility, for example, in interpreting good faith, is based on Article 1338, paragraph (3) of the Civil Code.

The antinomy between unification and pluralism is that the applicable legal system is pluralism but, on the contrary, faces unification or unity in law. Between the value of protection (protection) and restriction (restriction), it is often felt unprotected if it is limited. Between physical values and spiritual values, namely in civil law, there are physical values with spiritual values, as in Book I of the Civil Code. In civil law, the antinomy between dynamics and stability is a tension of tug of war between the two, on the one hand wanting an orderly order and on the other hand



wanting development. The principle of personality wants individual freedom and one's interests; on the other hand, the principle of fellowship wants an ordinary life, and in this everyday life, the common interest must be placed above personal interest (Mochtar, 2015).

Antimony can work together in law discovery activities because justice, which equates to giving to everyone, is applied equally in constituting activities, while proportional justice applies to constitutional activities. Namely, everyone gets what their right or share (*sum cuique tribuere*) is.

Intellectual Property Rights Law aims to provide legal protection for the intellectual property of the Indonesian people, develop new inventions in the technology field, accelerate the process of transferring and spreading technology and trigger economic growth. However, other views contradict the enforcement of Intellectual Property Rights law, which states that Intellectual Property Rights law in Indonesia as a developing country is a form of legal protection for the interests of developed countries, Intellectual Property Rights are individualistic regimes to monopolize technology to protect investment, Intellectual Property Rights are nothing more than a new model of colonialism (neo-colonialism) wrapped in a neo-colonial spirit. Liberalism. Indonesia has been caught in an international trap with the ratification of the WTO agreement (Thalib & Muchlisin, 2018). In the agreement, it is emphasized that every country that has participated in the World Trade Organization, like it or not, ready or not, must respect the existence of Intellectual Property Rights.

This means that Indonesia is required to adapt all intellectual property rights regulations to the TRIPs standard. The application of the TRIPs provisions is acceptable. According to Hasbir Paserangi, TRIPs impose a uniform paradigm of intellectual property rights protection in WTO member countries, even though there are fundamental differences in the perspective of intellectual property rights between developing and developed countries (Hidayah, 2017). Developed countries adhere to a modern Intellectual Property Rights protection system that gives individuals exclusive rights to their knowledge and inventions. In contrast, developing countries with societies that are still traditional, adhering to communal rights, actually regard imitation of works and knowledge as the highest award for these works. TRIPs undemocratically penalize developing countries for these differing perspectives (Nuhrison, 2009).

In connection with this, humans will lose all possibilities to obtain other rights without being based on Health. Therefore, Health is one of the basic human needs. Recognition and protection of the right to Health are constitutionally regulated. Since the promulgation of the 1949 Constitution of the United States of America, the right to Health has been regulated in Article 40, which reads as follows: "The authorities shall always endeavor to promote public hygiene and the health of the people." The regulation of the right to Health in Article 40 of the Constitution of the United States of Indonesia was later adopted by Article 42 of the Provisional Basic Law.

Then, after the enactment of the 1945 Constitution of the Republic of Indonesia, the right to Health was again regulated in Article 28H paragraph (1) with the following norms: "...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 has the right to obtain health services...". As an attribute of the provision, Article 4 of Law Number 36 of 2009 concerning Health states that "Everyone has the right to health." to fulfill the right to a healthy life for the population, including the poor and underprivileged. Including these provisions in the 1945 Constitution and Health Law illustrates a remarkable paradigm shift. Health is no longer only associated with fate or God's gift, which is everyone's business and has nothing to do with state responsibility. However, Health has become a legal right guaranteed, protected, and respected and must be fulfilled by the Government. Country. It is reflected in Article 28I paragraph (4) of the 1945 Constitution, which emphasizes that the state's



responsibility, especially the Government, is to protect, enforce, and fulfill human rights (Sikumbang & Saragih, 2022).

Not only in Indonesia, the global community, through the Constitution of the World Health Organization (WHO) 1946, has also outlined that "to obtain the highest degree of health is a human right for everyone" (the enjoyment of the highest attainable standard of Health is one of the highest attainable standards of Health). Fundamental rights of every human being). Based on this, the right to Health is recognized as a "fundamental right." The existence of the right to Health as a fundamental right was then emphasized in the general comment of the Committee on Economic, Social and Cultural Rights on the right to Health, which stated, "Health is a fundamental human right indispensable for the exercise of other human rights." The Committee on Economic, Social and Cultural Rights comments emphasize placing the right to Health as a fundamental human right. They should take precedence over implementing other human rights (Tumanggor, 2010).

It is proper that the right to Health is respected and implemented by the state as one of the fundamental rights. The state's obligation to protect the right to Health owned by all citizens is in line with what is stated by WHO, namely that the state, in this case, the Government, has a responsibility for the Health of its citizens. According to WHO, "government has a responsibility for the health of their people which can be fulfilled only by the provision of adequate health and social measures."

The state's responsibility to fulfill the right to Health as a fundamental right is reaffirmed in the Address Declaration. The affirmation is contained in the following sentence: The important WHO and UNICEF Declaration of Almaata adopted at the International Conference on Primary Health Care in 1978 also used similar language: The Conference strongly reaffirms that Health, which is a state of complete physical, mental and social wellbeing, and not merely the absence of disease or infirmity, is a fundamental human right and that the attainment of the highest possible level of Health is a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector (Sains et al., 2002).

The declaration made by WHO and UNICEF reaffirms the right to Health, which is part of human rights; thus, fulfilling the right to Health is the responsibility of the state and a goal from all over the world that various sectors must support. Through its various policies, such as providing a health insurance system, providing health infrastructure, and optimizing human resources such as medical personnel, it is one of the state's efforts to fulfill the health status of the wider community (Nursofwa et al., 2020). Likewise, amid a disease pandemic, the state's responsibility to maintain public Health is becoming increasingly important. The state must optimize the allocation of state finances, optimize the available regulations, and remember to keep the media personnel on the front line. The success or failure of the state in dealing with the coronavirus shows its success or failure in maintaining the Health of the people it is responsible for (Kamarulah & Prakoso, 2023).

Health development is based on humanity, balance, benefits, protection, respect for rights and obligations, justice, gender, non-discrimination, and religious norms. Aims to increase awareness, willingness and ability to live a healthy life for everyone to realize the highest degree of public Health as an investment for developing socially and economically productive human resources. Health development is oriented towards the goals of physical fitness (fitness) and Health (wellness), and it is no longer a mere disease prevention paradigm according to the 2010 vision of Healthy Indonesia.

Until now, Indonesia has been facing various challenges in health development. Challenges that still have to be faced include the demographic bonus, which also has an impact on increasing maternal mortality, infant mortality, under-five mortality, and undernourished children under five.





Then, communicable diseases are still common and non-communicable diseases are starting to increase significantly, causing a double burden of disease in Indonesia. Some infectious diseases, such as TB, tend to increase again, and new infectious diseases, such as COVID-19, are significant threats to Indonesia's current health development (Nurhalimah, 2020).

Indonesia's next challenge is the decentralization of the health sector and the Government's commitment to it, which has yet to run as expected. Cross-sectoral cooperation and regulatory support are significant challenges. Health management, which includes health policy, administration, health information system, health law, community protection, law enforcement, and awareness, has yet to support health development fully. This indicates that the decentralization of Health in Indonesia has yet to run optimally.

Community empowerment in the health sector still places the community as an object, not a subject. Hence, monitoring knowledge, attitudes, behavior, and community independence for healthy living still needs to be improved. In terms of health services, Indonesia still needs to be constrained in efforts to improve the quality of health services with various problems faced, such as the need for more equity and empowerment of the number and quality of health human resources in all regions. There are still gaps in access and quality of health services between regions, health service gaps based on gender and groups at the socio-economic level, production of health services is still weak, and the limited number and not yet optimal allocation of health financing.

CONCLUSION

Health development in Indonesia, which has been planned through the Health RPJP and has entered the fourth implementation stage, has yet to show the expected results. It can be seen from the current health problems faced by Indonesia, which have not shown a significant decline. Plus, the COVID-19 pandemic raises the risk of increasing existing health problems caused by delays in implementing health development. Therefore, it is hoped that the Government will be able to balance the control of COVID-19 with health development so that there will be no increase in health problems. It can be done by adjusting existing health development programs to the conditions of the Covid-19 pandemic.

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