



PRINCIPLES OF LEGAL PROTECTION OF HEALTH SERVICES FROM THE PERSPECTIVE OF SOCIO-LEGAL STUDIES

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Abstract

This study discusses the principle of legal protection in health services with a socio-legal approach, which integrates normative and sociological legal studies. The main focus of the study is on legal protection for patients and medical personnel in the context of health services in Indonesia. Optimal health services require legal certainty, especially related to the rights and obligations of all parties involved. In practice, many disputes arise due to negligence or certain medical actions, which shows a gap between normative rules and implementation in the field. The results of the study indicate that legal protection in health services does not only refer to statutory regulations such as the Health and Medical Law, but must also consider social aspects, culture, and ethics that apply in society. The socio-legal approach offers a comprehensive solution by integrating legal perspectives with social reality, so that it can create substantive justice for patients and medical personnel. From the analysis conducted, it was found that the application of a restorative justice-based approach can be an effective alternative in resolving medical disputes, in addition to formal litigation mechanisms. This is because this approach is more capable of fulfilling a sense of justice for victims, perpetrators, and the wider community. This study concludes that strengthening regulations and implementing legal principles in health services, by considering social aspects, is an important step to achieving a fair, effective, and sustainable health system.

I. INTRODUCTION

Health services are basic human needs that must be met to realize optimal welfare and quality of life. As part of human rights, health services are guaranteed by the state as regulated in Article 28H paragraph (1) of the 1945 Constitution which states that everyone has the right to live in physical and spiritual prosperity, have a place to live, and have a good and healthy living environment. In its implementation, health services involve various parties, namely patients, medical personnel, and health service providers, each of which has rights and obligations that must be protected by law. (Country 2001)

However, in practice, the relationship between the parties is not always harmonious. Various disputes, both criminal and civil, often arise due to negligence, errors, or different perceptions between patients and medical personnel. This situation indicates a gap between applicable legal norms and their implementation in health service practices. This imbalance indicates the need for a legal approach that not only focuses on normative aspects, but also pays attention to the social dynamics that influence the relationship between the parties involved. Therefore, the socio-legal approach is relevant to

studying legal protection in health services because it is able to integrate normative dimensions with social reality. (Rahardjo 2009)

Restorative justice-based approaches have emerged as an effective alternative to resolving medical disputes. This approach emphasizes problem solving through dialogue, deliberation, and restoration of relationships between the parties involved, thereby creating substantive justice. In the context of health care, restorative justice can provide a more dignified solution, both for patients who feel aggrieved and for medical personnel facing lawsuits. (Rado and Badilla, n.d.)

This study aims to analyze legal protection in health services with a socio-legal approach, especially in resolving medical disputes through restorative justice mechanisms. This study is expected to contribute to strengthening regulations and implementing laws in fair and effective health services in Indonesia.

In the context of health services in Indonesia, medical disputes are often in the public spotlight, especially when there are allegations of violations of service standards or negligence that cause harm to patients. This kind of dispute, in addition to creating public distrust of the medical profession, also has the potential to threaten the

sustainability of health services. Therefore, a legal framework is needed that not only protects patient rights, but also provides legal certainty for medical personnel who carry out their duties in accordance with professional standards.(AK Purba and Sidi 2023)

One of the main problems in resolving medical disputes is the dominance of a retributive legal approach. which tends to focus on imposing sanctions on perpetrators without paying adequate attention to the needs of victims. This approach is often unable to answer the essence of justice for all parties involved. On the other hand. the restorative justice approach offers a more inclusive solution by prioritizing the restoration of relationships. compensation. and empowerment of victims and perpetrators. This is in line with the spirit of humanitarian values contained in Pancasila. especially the second and fifth principles.(Rado and Badillah 2019)

The importance of the socio-legal approach in this study lies in the ability of this approach to connect legal theory with the social context in which the law is applied. In health services, the interaction between medical personnel, patients, and health service providers is not only regulated by formal law, but is also influenced by cultural values, professional ethics, and community expectations. Thus, the socio-legal approach is able to provide a more comprehensive analysis in viewing the legal protection of health services in Indonesia.(Perdana, Zarzani, and Fauzi 2018)

This study is expected to provide a deeper understanding of the importance of integration between normative and social approaches in resolving medical disputes. In addition, this study also aims to offer policy recommendations that can support the implementation of restorative justice as an alternative to resolving medical disputes that is fairer and more dignified for all parties.

II. RESEARCH METHODS

This research uses a sociological legal approach method.(Indra Utama Tanjung 2024)Which is an approach to legal reality in society. The steps are interviews and empirical analysis. so that the design and steps of this research technique will follow the pattern of social science research. this starts from the formulation of the problem which begins with the determination of respondents and sources. and collecting data. making an analysis design and ending with a conclusion.

III. RESULTS AND DISCUSSION

A. Problematic Health Services in Indonesia

The increasingly widespread legal intervention into areas of community life has caused its association with social problems to become more intensive. This makes the relationship between legal order and broader social order increasingly a major problem in legal science. Within such a framework of thought, legal studies must also pay attention to such a relationship. Therefore, the complexity of the relationship between legal order and social order must receive serious attention in order to properly understand the ins and outs of the problems it regulates.(Esmi 2005)

Law(Antonius, Yasmirah, and Zarzani 2023)unable to carry out its function to carry out social engineering when society is experiencing a continuous process of change. as a result of the development process which has very large implications in the dynamics of the development of society.(Sutrisno et al. 2018)The discussion of law and social change will revolve around the study of how law that functions to regulate society can compete with social change. In this case, law functions as a means of social control and a means of carrying out "social engineering". That means that law is expected to be able to shape. direct. and at certain times also change society towards something that is aspired to. This function of law is not always supported by the social life where the law is applied. To maximize the function of law, it must be supported by an adequate level of legal awareness in society. (Adi 2012)

Likewise, primary care physicians implement the gatekeeper concept as a rule in carrying out their profession at first-level health facilities in the era of National Health Insurance. Good human resources (doctors) are influenced by the education system before graduating from medical school and after graduating as a doctor which has been regulated through Law No. 29 of 2009 concerning Medical Practice. The second is regarding the health service system which has been regulated through various laws, including Law No. 36 concerning Health. Law No. 44 concerning Hospitals. Minister of Health Regulation No. 28 of 2009 concerning Clinics. Minister of Health Regulation No. 2052/Menkes/Per/X/2011 concerning Practice Permits and Implementation of Medical Practice and others. The third is the financing system which has been regulated through Law No. 40 of 2004 concerning the National Social Security System. and Law No. 24 of 2011 concerning the

Social Security Administering Agency. In addition to the three factors above, there is a factor that is no less important, namely the factor of awareness of professional ethics and law.

According to Lawrence M. Friedman, law is a system consisting of Legal Structure, Legal Substance and Legal Culture. The components of the legal structure are institutions created by the legal system with various functions within the framework of supporting the operation of the system. This component makes it possible to see how the legal system provides services for the processing of legal materials regularly. The components of the legal substance are the output of the legal system in the form of regulations, decisions used by both the regulating and regulated parties. The components of the legal culture consist of values, attitudes, perceptions, customs, ways of doing, ways of thinking, opinions, which influence the operation of the law. This legal culture functions as a bridge connecting legal regulations with the legal behavior of all citizens. (Friedman 1975) Whether a person uses or does not use the law, and whether or not they obey the law, is largely determined by the values of the legal culture that are internalized by the members of society.

The concept of legal culture has the advantage of drawing attention to values related to law and legal processes. (Cape 2021) Based on this understanding, legal culture can undoubtedly influence the process of law in society which ultimately stems from the problem of awareness and compliance with the law. Legal culture is in the form of values, traditions, and spiritual strength that determine how the law can be implemented by society. Law is not only focused on the understanding of law as rules, norms, and principles because basically social reality has a great influence on the functioning of law in everyday life so that it will affect institutions and people's behavior in responding to rules and norms. Likewise, the analogy of a primary care doctor in carrying out his role as a gatekeeper concept in order to function optimally in addition to other constraints, including the service system, health financing system, and human resource factors themselves. There is also a legal culture factor in implementing a regulation.

According to Soerjono Soekanto (Soekanto 1977) The concept of legal culture includes legal awareness. Thus, legal culture is nothing other than the totality of factors that determine how the legal system obtains its logical place within the framework of the culture of the general public

(doctors). The legal culture of primary care physicians also concerns the attitude of doctors towards the law and the legal system such as beliefs, values, ideas, and expectations or is also often interpreted as a situation of social thought and social power that can determine how the law is obeyed, violated and deviated. The focus of this legal culture is on values related to law and the legal process. A doctor uses or does not use the law, obeys or does not obey the concept of gatekeepers in a tiered referral system depends very much on his legal culture. (Rianto, Zarzani, and Saragih 2024) Based on this, a positive legal culture must be built for primary care physicians in carrying out their role as gatekeepers towards a positive legal culture for the development of society.

Based on theory (Al Kautsar and Muhammad 2020) symbolic interactionism, primary care physicians in implementing a rule or policy as gatekeepers view the gatekeeper concept as a symbol, where the symbol has a meaning according to social interaction with their patients. That in fact the reality of an existing law/rule cannot be separated from the results of human interpretation. Its meaning is also very diverse based on perception, beliefs, opinions and attitudes of doctors in interpreting it and the plurality of meanings will always occur. A primary care physician in understanding and interpreting the gatekeeper concept as a symbol, requires an understanding/verstehen with a hermeneutical approach. (Ismail 2022) Legal understanding does not just stop at legal behavior based on legal texts/das sollen, but extends to substantial behavior/das sein as the true legal foundation. In interacting with his patients, a doctor will interpret the gatekeeper concept where hermeneutics is no longer directed to the text but to reality itself, how to capture the meaning of a reality that contains symbols. Legal behavior is behavior that is influenced by rules, decisions, orders or laws. A doctor's legal behavior can be used as an indicator of the doctor's own legal awareness because sometimes a legal provision is mostly obeyed and some are not fully obeyed, resulting in the doctor's legal behavior in experiencing the gatekeeper concept in conditions of varying degrees of compliance, so that basically legal awareness and legal compliance are closely related. Legal awareness includes elements of legal knowledge, knowledge of the contents of the law, legal attitudes, and patterns of legal behavior. Factors that influence the doctor's legal behavior are legal

communication factors and then the primary care doctor's own legal knowledge factors.

Efforts to increase legal awareness of doctors are legal communication efforts, namely informing the gatekeeper concept in a tiered referral system to primary care doctors who are the targets of information in order to generate compliance through socialization, education or legal inculturation that touches the hearts of doctors. When doctors' legal awareness of the gatekeeper concept has been formed and has undergone an internalization process, legal compliance is formed.

Chambliss and Robert B. Seidmann stated that there is an influence of social forces in the working of law. Social, cultural, economic and political forces will always influence it. Therefore, it is necessary to realize that law is indeed a part of social life and thus will never be in a vacuum and face abstract things. Rather, it is always in a certain social order and living humans.(Soekanto 1977)Primary care physicians as role holders in Chambliss and Seidmann's theory are required to optimally carry out their role as gatekeepers. But in reality, many social factors influence them so that the demands as gatekeepers do not run as they should.

Problematics(JEM Purba and Tanjung 2022)health services in Indonesia cover various complex aspects involving the relationship between legal order and social order in society. The law is expected to be able to carry out the functions of social control and social engineering. but is often hampered by the low level of legal awareness of the community and the ever-evolving social dynamics. In the context of health services. this challenge is increasingly evident in the implementation of the gatekeeper concept by primary care physicians. which is influenced by factors of the service system. financing. education. and legal culture.

Legal culture, as stated by Lawrence M. Friedman and Soerjono Soekanto, plays an important role in the effectiveness of law in society. Values, traditions, and legal awareness serve as a bridge between legal regulations and citizen behavior. Primary care physicians often face legal culture constraints in implementing the tiered referral system, which has implications for their level of legal compliance.

Furthermore. symbolic interactionism theory emphasizes that the concept of gatekeeper as a legal symbol must be understood hermeneutically through social interaction. Understanding the law is not only limited to the

text of the rules (das sollen). but also substantial behavior (das sein). which reflects the reality in the field. However. many social, cultural, and economic factors influence the implementation of this rule. thus causing varying levels of awareness and compliance with the law of doctors.

To increase legal awareness, there needs to be an effective legal communication effort through education, socialization, and legal inculturation. This internalization process is expected to encourage legal compliance of primary care physicians in carrying out their role as optimal gatekeepers. Thus, the law can function effectively in a dynamic social context, supporting the creation of better health services in Indonesia.

B. Anthropological Public Satisfaction and Legal Protection of Health Services in Indonesia

The discussion of law and social change will revolve around the study of how law, which functions to regulate society, can compete with social change. In this case, law functions as a means of social control and a means of carrying out "social engineering", which means that law is expected to be able to shape, direct, and change society towards something that is desired.(Kusumaatmadja 1976)The function of law as such is not always supported by the social life in which the law is applied. To maximize the function of the law, it must be supported by an adequate legal culture which ultimately stems from awareness and compliance with the law.

Since January 1, 2014, the Indonesian Government has implemented National Health Insurance (Universal Health Coverage) based on Law No. 24 of 2011 concerning the National Social Security Agency (BPJS) where previously the government had also stipulated Law No. 40 of 2004 concerning the National Social Security System (SJSN) as the basis for social security in Indonesia. Based on Law No. 40 of 2004 concerning the National Social Security System Article 24 Paragraph (3) which states that the Social Security Agency develops a health service system. service quality control system. and service payment system to increase efficiency and effectiveness.

Then it is explained in the operational basis of BPJS Kesehatan in the form of a Managed Care system where with a tiered referral system, health services are divided into three levels, namely primary, secondary and tertiary.

In the era of National Health Insurance, there was a "reform" in the health sector where

previously "unstructured" health services were changed to "structured". The health financing pattern which was previously "fee for service" became "prospective payment/capitation". By using the Managed Care system as an operational basis, health services are divided into primary, secondary and tertiary health services. In the Managed Care system, this first-level health facility becomes the focal point playing a very large and important role with the concept of "gatekeeper" / gatekeeper for access to health services in a hierarchical manner. where doctors are required to play an optimal role according to their competence and authority as primary care doctors must be able to filter 155 types of disease diagnoses.(Saragih and Hadiyanto 2021)

National Health Insurance has been running for more than a year and there are still many shortcomings. dissatisfaction and complaints from the community using BPJS health services. as well as health workers themselves. This is caused by various factors both by health facilities and health workers and the community's paradigm has not changed from curative to promotive-preventive.

So a family doctor / Primary Care Physician (DLP) in carrying out his profession and his role as a gatekeeper faces various obstacles both internal and external, including the service system. health facility facilities and infrastructure. financing system. human resource system. There are also legal culture factors in implementing a legal regulation.

The legal culture of primary care physicians concerns the attitude of physicians towards or is often also interpreted as a state of mind and social power that can determine how the law is obeyed. violated and deviated. The focus of this legal culture is on values related to law and legal processes. A primary care physician uses the law or does not use the law. obeys or does not obey in implementing the gatekeeper concept in a tiered referral system depends greatly on the legal culture.

The legal culture of primary care physicians is the whole factor that determines how the legal system (regulations) of the gatekeeper concept obtains its logical place so that the legal system can run. Based on this, a positive legal culture must be built for primary care physicians in carrying out their role as gatekeepers towards a positive legal culture for the development of society.

Legal awareness also concerns the issue of legal knowledge, legal recognition and legal

appreciation. According to B. Kutichinsky, legal awareness is an abstract conception within humans about the harmony between the desired order and tranquility or is marked by indicators including knowledge of legal regulations (law awareness), knowledge of the contents of legal regulations (law acquaintance), attitudes towards legal regulations (legal attitude) and patterns of legal behavior (legal behavior).(Soekanto 1977)

The legal awareness of primary care physicians must be able to be described through how they know that the relationships that exist in their social order are regulated by the legal order so that the interactions that exist in society can take place in an orderly manner. Primary care physicians have knowledge and understanding of the contents of the law. In addition, it is also supported by the legal attitude of doctors to assess the existing legal rules concerning the medical profession and on the other hand there must be legal behavior from primary care physicians that is in accordance with the applicable legal rules.

According to Soerjono Soekanto, public recognition of legal provisions means that the public knows the content/substance of the legal norms. This means that there is a certain degree of understanding of the applicable legal provisions. However, this is not a guarantee that citizens who recognize certain legal provisions will automatically comply with them. but it also needs to be recognized that people who understand a legal provision sometimes tend to comply with it. So to be more specific, the knowledge in question, namely the understanding of the content/substance of this law (Legal Acquaintance) is knowledge about the role and function as a gatekeeper. That most doctors already know the term gatekeeper, the only problem is that doctors do not understand the meaning contained behind the substance of the legal norms that regulate this gatekeeper. this also affects the understanding of the understanding of the intended Tiered Referral System, not all doctors can interpret the intent of the meaning contained in the written regulations contained in the applicable legal norms that regulate this matter.

Legal Attitude A person has a tendency to make certain assessments of the law. certain appreciation or attitudes towards legal provisions, namely to what extent an action or deed prohibited by law is accepted by the majority of society. Also the reaction of society based on the prevailing value system. Society may oppose and

obey the law because their interests are guaranteed to be fulfilled. A citizen obeys the rules perhaps because he is fundamental or because of his instrumental attitude. Compliance caused by a fundamental attitude is clearly more stable because it is based on solid thinking, not based on personal interests. Instrumental attitudes arise when obeying the law because of fear of sanctions, because there are supervisory officers or because most people obey the rules. The attitude of primary care doctors in implementing the gatekeeper concept is included in the instrumental attitude, namely the attitude that arises when obeying the law because of fear of sanctions, this is due to supervision from BPJS Kesehatan.

Based on the research, informants support the gatekeeper concept regulation. However, in its implementation, it has not been fully optimal in its role. From the results of in-depth interviews with informants, doctors are trying to play the role of gatekeepers but are hampered by external obstacles, including the community still assuming that Primary Health Facilities/Community Health Centers have not been trusted as reliable health facilities in treating. Community Health Centers are only a place to ask for a referral letter, then they insist on asking for a referral letter for treatment at the Hospital on the grounds that they have paid a premium every month so it is their right to choose a Hospital as a more trusted health facility.

Another factor is because the location of the Tegal Selatan Health Center is located in an urban area and very close to the Hospital in Hamparan Perak, causing people to prefer to seek treatment at the Hospital facility. and only use the Health Center as a place to ask for a Referral Letter. Even the behavior of the community is more extreme, only telling their family to ask for a referral letter but the patient himself does not attend to be interviewed and examined by the doctor.

The legal awareness of primary care physicians regarding their role as gatekeepers is inadequate. This can be seen from the low level of knowledge and understanding of informants as well as attitudes and behaviors regarding regulations regarding the role of primary care physicians as gatekeepers. This can be seen from the low level of knowledge and understanding of informants who have not referred to Law No. 40 of 2004 Article 24 Paragraph (3) concerning the National Health Insurance Service System and Regulation of the Minister of Health No. 1 concerning the Tiered Referral System and

Regulation of the Board of Directors of BPJS Kesehatan No. 095 of 2014 concerning Guidelines for the Implementation of the Primary Service Main Function Optimization Program. The knowledge and understanding that doctors have is only knowledge and understanding about the implementation of National Health Insurance and BPJS Kesehatan only knows that the National Health Insurance regulations and the gatekeeper concept system in the tiered referral system have been regulated by Law and Regulation of the Minister of Health.

Through the symbolic interactionism theory approach which states that community life is formed through the process of interaction and communication between individuals and between groups using symbols whose meaning is understood through the learning process. A doctor's action in the interaction process is not merely a direct action against a stimulus that comes from the environment but the result of interpretation. so it is a learning process in understanding symbols and adjusting the meaning of the symbols. Based on the symbolic interactionism of primary care doctors in implementing a rule or policy as a gatekeeper, they view the concept of a gatekeeper as a symbol where the symbol has a meaning according to its social interaction. In interacting with his patients, a doctor will interpret the concept of a gatekeeper where with understanding/verstehen with a hermeneutics approach, it is no longer directed at the text but at reality itself, how to capture the meaning of a reality that contains symbols.

Based on the theory of how the law works according to Chambliss and Robert B. Seidman, it is stated that there is an influence of social forces in how the law works. Social, cultural, political and economic forces will always influence it. It must be realized that law is part of social life, thus it is not in a vacuum and is faced with abstract things and is always in a certain social order and living humans. Primary care doctors as "role occupants" in the theory of Chambliss and Seidman are required to work optimally by BPJS Kesehatan to carry out their role as gatekeepers where doctors will be the first contact (first contact care) when patients are sick. carry out continuity of service (continuity care). coordination of services (coordinated care). comprehensiveness of services (comprehensive care). with a family and community health orientation (family and community oriented care) focusing on promotive and preventive health efforts. with a capitation payment method (prospective payment).

In fact, there are many social factors that influence so that the demands of the optimal role as a gatekeeper do not run as they should due to social and personal forces. economic. political. and other forces. Among these factors are economic factors where the capitation rates and INA-CBGs paid to Primary Health Facilities and Advanced Referral Health Facilities set by the Ministry of Health are low.¹The small capitation certainly makes the income of primary care doctors small, especially for independent/private practices. Moreover, all costs and income of primary care doctors come from capitation funds.²

The implementation of BPJS/SJSN will have two implications, namely, first, welfare for the community and welfare for service providers, namely doctors; second, BPJS/SJSN can cause disaster for patients and doctors. National Health Insurance/BPJS Kesehatan can provide welfare and benefits if there is justice for doctors and the community and vice versa. The concept of values as a form of formulation of the legal culture of primary care doctors in their role as gatekeepers is reflected in several understandings that the National Health Insurance program is beneficial and provides justice and certainty not only for the community as users of health services. but also provides justice. benefits and certainty for primary care doctors as the spearhead and gatekeeper in a tiered referral system and provides welfare for medical professionals and happiness for everyone.³

IV. CONCLUSIONS AND RECOMMENDATIONS

- 1) The problems of health services in Indonesia show that the effectiveness of the law in supporting the health system is greatly influenced by the complex relationship between legal rules, legal culture, and social dynamics. The main challenge in implementing the gatekeeper concept by primary care physicians lies in the low awareness and compliance with the law which is influenced by the service system, financing, and social and cultural factors. Efforts to increase legal awareness through socialization, education, and inculturation are strategic steps to create a positive legal culture. With this approach, the law can play a more effective role in

supporting the national health system, providing optimal benefits to the community, and building sustainable compliance among primary care physicians.

- 2) The implementation of the National Health Insurance (JKN) system through the gatekeeper concept by primary care physicians has not been optimal due to low legal understanding. lack of public trust in primary health care facilities. and low capitation rates that have an impact on the welfare of doctors. These obstacles are exacerbated by social and legal cultural challenges that affect compliance and the role of doctors as gatekeepers. To achieve the goal of JKN that is fair and provides benefits to the community and doctors. strengthening legal understanding is needed. improving the quality of primary health care facilities. and improving the support system. including adequate incentives.

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¹Aries Kelana, Hayati Nupus, Umaya Khusniah, Legal Regulations Draw Protests, (Gatra, Edition 8-XXI, December 25, 2014) P.99.

²Ibid. Page 99

³Priyo Sidipratomo, BPJS Runs, Doctors' Welfare Increases, (Info Askes Bulletin, July 2012 Edition), p.55.

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