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Original Article

Legal Analysis of the Implementation of Doctors' Medical Services (Study of the Decision of the Constitutional Court Number 82/PUU-XIII/2015 Which Revokes Article 11 (Paragraph 1 and Paragraph 2) That Medical Personnel Are Not Health Workers)

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Abstract

The study conducted is a legal scrutiny concerning the provision of medical services by physicians, in accordance with the 2015 Constitutional Court ruling which invalidated the notion that medical staff are not considered healthcare professionals. The research methodology employed is normative law analysis. Information gathering is done primarily through library research. The research process comprises three main phases - preparation, fieldwork, and data analysis. Findings from this investigation suggest that clearly delineating job responsibilities for healthcare professionals can lead to the delivery of effective and high-quality healthcare services to the public. Because all health workers have service specialties in accordance with their profession. This is what is referred to as (the right man on the right place) so that it no longer generates counterproductive work behavior by medical personnel. As a recommendation, the formation of a legislation needs to pay attention to the hierarchy of laws and regulations so as not to cause erroneous legal interpretations, especially defining it using clear legal language so that it is easily understood and carried out by all citizens.

Keywords: Doctor's Medical Services, Constitutional Court, Medical Personnel, Health Personnel.

1. Introduction

According to Article 1 of Health Law Number 17 of 2023, health encompasses an individual's physical, mental, and social well-being, rather than just the absence of illness, in order to facilitate a productive life. The second paragraph explains that Health Services include various activities aimed at maintaining and enhancing public health through promotive, preventive, curative, rehabilitative, and/or palliative measures. This legal interpretation highlights the importance of considering both physical and spiritual aspects of health when planning healthcare interventions.

To organize health efforts, if viewed from the phrase, the resources referred to in paragraph 2 are health workers in addition to other resources, which means that medical personnel are also classified as health workers. because in the next paragraph, namely paragraph 6, it is said that: “A health worker is any person who devotes himself to the field of health and has knowledge and/or skills through education in the field of health which for certain types requires the authority to carry out health efforts” (Law No.36 of 2009).

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The article clearly states that doctors and medical personnel are considered as healthcare workers due to their dedication to the field of health and the need for authority in carrying out healthcare activities. This is because doctors, as a unique profession in the medical field, possess specific skills that set them apart from other professions. By revoking Article 1 paragraphs 1 and 2, of the Health Workers Law, by the Constitutional Court, the tendency of counterproductive work behavior of medical personnel towards doctors' medical services remains, due to the weak control of the professional institution.

The applicant argues that with the enactment of the health worker law, the constitutional rights of medical personnel are harmed, but in the explanation of the applicant III, the argument is refuted by the statement that "it is legally responsible, juridically constitutional, morally constitutional, to ensure the practice of quality medicine, in accordance with professional standards, for the implementation of health services" (Decision of the Constitutional Court, Number 82/PUU-XIII/2015).

The request for a lawsuit by the applicant that has been granted and revoked by the Constitutional Court does not necessarily limit the counterproductive work behavior of doctors in medical services. Based on the decision of the Constitutional Court, de jure, doctors are medical personnel and not in the group of health workers, which is the subject of the petitioners' lawsuit. However, de facto, in the practice of medical services so far, the reality shows that doctors have changed their status and function explicitly as health workers and not only as medical personnel which is the subject of the lawsuit. Counterproductive work behavior, is the tendency of doctors to behave not in accordance with their professional oath.

This counterproductive work behavior can be seen in administrative and structural positions held by medical personnel in government and non-government institutions that are far from the medical profession. The tendency is also seen from doctors who take educational levels outside their own expertise. There are administrative positions held by doctors, both general practitioners, specialist doctors in an organization or health institution. This behavior is counterproductive work behavior, for the profession of doctors who are medical personnel. This occurrence continues to grow rapidly in the health sector worldwide, garnering no attention from regulatory bodies like the Indonesian Doctors Association (IDI) and the Indonesian Medical Council (KKI).

Departing from the description of the problems above, the problem formulations in this study are 1) Are medical professionals disregarding the Constitutional Court's ruling on the removal of article 11 paragraphs 1 and 2 of Law Number 36 of 2014 by displaying conflicting behaviour? 2) Is there an unproductive attitude among doctors following the Constitutional Court's decision, and are they failing to fulfil their roles as medical personnel? 3) How are doctors perceived in terms of their role as healthcare workers, and are they truly in the right positions?

2. Literature Review

2.1. Legal Definition

Legal is a system, meaning an arrangement or regular order of the rules of life, all consisting of parts that are related to one another (Marbun & Kamelus, 2001). Meanwhile, the legal system is a whole unit of order consisting of parts or elements that are closely interconnected and related to each other. To achieve a unitary goal, cooperation between these parts or elements is needed according to certain plans and patterns (Nurhardianto, 2015). Lexically, legal is a regulation or custom that is officially considered binding, confirmed by the

ruler or government. Law also includes rules in the form of laws and related regulations, rules in society, and decisions made by law enforcement.

2.2. Legislation

Legislation encompasses a set of written rules that establish legal standards and are created or mandated by government bodies or designated authorities following the procedures outlined in the legislation (Kerwin & Furlong, 2018). Referring to Rohmat (2015), Legislation is a political product that is a crystallization of the political interests of its makers. Tami Rusli states in her book Introduction to Legal Science that legislation refers to state regulations that carry legal weight. The government is responsible for creating and upkeeping legislation. According to Siswoyo (2020), there are two interpretations of legislation: one is formal, referring to government decisions made in collaboration with the People's Representative Council, and the other is material, encompassing any government decision that imposes obligations on all residents or individuals.

2.3. Definition of Constitution

The constitution is a higher or even the highest law and the most fundamental in nature, because the constitution itself is a source of legitimacy (Asshiddiqie, 2021). The constitution is a state regulation formed by the authorities and binds the community. In this sense, it is divided into two, namely in the Material sense *(wet in materiele zin)*, namely every written decision issued by an authorized official, which contains rules of conduct, which are generally binding or binding. While in the Formal sense *(wet in materiele zin)* a law is a written decision stipulated by the government together with parliament in accordance with the procedures set out in the 1945 Constitution.

2.4. Health Law

Health law encompasses all legal regulations concerning healthcare and its implementation. It governs the interactions between health service providers and the community. The rights and responsibilities of both the providers and recipients of healthcare are outlined in health law. In comparison to other legal fields, health law is relatively new (Sampurno, 2011).

2.5. Health According to Legislation

As per the Health Law Number 17 of 2023, health is defined as the overall well-being of an individual, encompassing physical, mental, and social aspects, rather than just the absence of illness, in order to support a productive lifestyle.

2.6. Definition of Health Worker

According to the Health Act of 2023, individuals working in healthcare are those who dedicate themselves to the health sector and possess the necessary expertise, qualifications, and professionalism gained through advanced education, often requiring specific permissions to implement health initiatives. According to Oenthersa (2014) healthcare staff can also fall under the category of employees. To clarify, they too should receive legal safeguards in line with standard labour laws and their employment agreement with the hospital. Moreover, as outlined in Government Regulation of the Republic of Indonesia Number 32 of 1996, health workers encompass individuals dedicated to the healthcare sector with expertise gained through education and training, often necessitating specific authorisation to provide medical interventions.

2.7. Definition of Medical Personnel

According to Health Legislation Number 17 of 2023, medical professionals are individuals who commit themselves to healthcare and possess the necessary expertise, qualifications, and abilities acquired through medical or dental training that enables them to provide healthcare services. According to Ferrer et al. (2005), medical professionals are individuals in the healthcare field tasked with delivering top-notch medical assistance to patients through the use of evidence-based medical practices and ethical considerations, all of which are subject to scrutiny.

3. Methods

When carrying out a study, it is crucial to employ a specific approach (Renyaan, 2023; Tokang & Yumame, 2023). Hence, this study employs empirical legal investigation, also known as field research, to explore both the practical application of laws and their impact on society. The study utilises normative legal research and relies on secondary data sources. Data for the study was primarily gathered through library research methods (Patmasari, 2022; Tebay & Ilham, 2023). The method applied for gathering data is document analysis which involves examining, exploring, and interpreting primary, secondary, and tertiary sources relevant to the study. The research process consists of three main phases - planning, conducting fieldwork, and analysing data.

4. Results and Discussion

4.1. Counterproductive Work Behavior of Medical Personnel in the Implementation of the Constitutional Court Decision on the Revocation of Article 11 Paragraphs 1 and 2 of Law No. 36 of 2014

According to Article 24C paragraph (1) of the 1945 Constitution, the ruling made by the Constitutional Court in Case Number 82/Puu-XIII/20015 is conclusive, meaning that it has permanent legal force and is therefore binding to be implemented, because the basis of the petition for review is the constitutional rights of the applicant who is harmed, and the action represents the legal interests of the entire community, namely the upholding of the constitution (Constitutional Law 2021 article).

The article's legal interpretation states that the applicant's request, that has been approved and ruled upon by the Constitutional Assembly, must be followed and adhered to by the applicants. It dictates that medical personnel are distinct from health workers, so it is essential for medical personnel to provide their services accordingly as professionals and not as health workers. Therefore, if the article is repealed, it will result in the closure of public roles in both government and private institutions.

Article 1, section 6 of the Health Law (Law No. 17 of 2023) states, “Medical Personnel is every person who devotes himself to the field of health and has a professional attitude, knowledge, and skills through professional education in medicine or dentistry which requires authority to carry out Health Efforts.”

The Indonesian Dictionary defines the word Medical as including or relating to the field of medicine and not the field of Health. Therefore, the phrase “Medical Personnel should be defined as everyone who devotes themselves in the Medical field (medicine, and) not in the health field in accordance with the Constitutional Court's decision above, where medical personnel are no longer included in the group of Health workers, because health workers and medical personnel are two terms whose meanings are different / dichotomy.

According to the law, it has been stated that doctors are not to be considered as health workers as per Article 11 paragraphs 1 and 2 of Law No. 36 of 2014. This decision has legal implications that medical staff must comply with. In fact, although de jure through the Constitutional Court's decision that doctors are not health workers, de facto doctors still carry out counterproductive behavior that contradicts that administrative positions are not their profession. There are public positions in the government sector and in the private sector above public positions that are not actually their profession.

According to Article 198 of Law Number 17 of 2023, Medical Personnel includes doctors, specialist doctors, and subspecialist doctors, as well as dentists, specialist dentists, and subspecialist dentists. Article 217 number 1, reads, Medical personnel who have completed the internship program can continue their education to a specialist program, and then to a subspecialist program. Therefore, the decision of the Constitutional Court must be adhered to in the practice of medical services, so that counterproductive work behavior does not conflict with the medical profession. This law has clearly separated the duties and functions of the doctor's own medical profession. However, the reality of doctors' services as medical personnel has been violated by medical personnel by overriding the decision of the Constitutional Court. Medical personnel until now still hold public positions such as head of department, head of field, head of health center which managerially is not a doctor's profession. Hence, when considering whether doctors exhibit counterproductive behaviour as healthcare professionals following the ruling of the Constitutional Court, the conclusion is affirmative. This is due to the fact that medical personnel have chosen to disregard both the ruling of the Constitutional Court and the legal proceedings associated with it.

4.2. Implementation of Doctors' Medical Services Based on the Constitutional Court Decision Number 82/PUU-XIII/2015

After the Constitutional Court's ruling, it is clear that the medical services provided by doctors are being affected by their counterproductive behaviour. However, it seems that there is still a long way to go before the decision is fully implemented.

Doctors' counterproductive actions as medical professionals following the Constitutional Court ruling are hindered by the conflicting interpretations outlined in Health Law No. 17 of 2023 and Minister of Health Regulation No. 28 of 2024. These regulations define health human resources as individuals actively engaged in the healthcare field, regardless of formal health education, sometimes requiring specific authorization to conduct healthcare activities. The question is who are the health human resources? Of course, it is none other than people who work in the health sector, namely medical personnel, pharmaceutical personnel and other professional personnel. This is what causes doctors who are medical personnel, on the one hand continue to function as medical personnel but on the other hand at the same time function as health workers. This is what makes doctors as medical personnel in their services behave counterproductive work, because there is dualism in the duties and functions of medical personnel. The effectiveness of doctors as medical personnel is often neglected due to their positions as other health workers by holding public positions. This phenomenon continues to occur and continues to occur on the counterproductive work behavior of doctors, which has shown that doctors ignore the decision of the Constitutional Court.

4.3. The Position of Doctors as Medical Workers and Not as Health Workers

The decision of the Constitutional Court Judges has closed the space for medical personnel as health workers. Article 11 (paragraph) 1 and (paragraph) 2 a quo, regulating health workers including medical personnel consisting of doctors, specialist doctors, dentists

and specialist dentists is understood as an article that has contradicted the 1945 Constitution. article 28.D and Article 28H. The article is seen as causing chaos and harm to the medical profession, undermining the legal authority of medical practice by lacking clear guidelines and not being explicitly authorized by Health Law Article 21 paragraph 3, which allows for certain exceptions for medical personnel.

The Health Workers Act is deemed flawed in terms of logic and legal policy structure as it fails to differentiate between professional staff (doctors and dentists) and vocational staff, leading to confusion. The lack of distinction between the professional duties of medical and health personnel in the law can result in disorder and legal ambiguity within the field of medical practice. "The law is only recognized as law, if it provides the greatest benefit to the greatest number of people" (Jeremy Bentham).

Health Law No. 17 of 2023 and the Minister of Health's regulations have clearly defined that medical personnel and health workers are different, but in phrasing, it still causes confusion where article 1 point 6 reads: *"Medical Personnel is every person who devotes themselves to the field of Health and has a professional attitude, knowledge, and skills through professional education in medicine or dentistry which requires the authority to perform Health Efforts."*

The phrase "devote themselves in the Health Sector" implies that doctors are health workers because they devote themselves in the health sector. If doctors are described as being dedicated to the medical profession rather than health care, the connotation of them being solely medical practitioners rather than holistic health professionals changes significantly.

Kelsen (2017) in his General Theory of Law and State states that the effective implementation of constitutional rules on legislation can be done if there is a body/organ (special court) other than the legislature that is tasked with testing whether the resulting legal product is constitutional or not. If it is deemed unconstitutional, then the body or organ has the right not to enact it. Thus, the purpose of the decision of the Constitutional Court judge who revoked Article 11 paragraphs 1, 2 provides the status of medical personnel to re-position their duties and functions as doctors / medical personnel and not health workers. Thus, the practice of the concept of "The Right Man in the Right Place", ensures that every medical personnel in their services must be in accordance with their professional background, and in accordance with their skills, abilities, and potential.

Hence, it is a must for medical personnel to again obey the decision of the Constitutional Court which states that doctors / medical personnel, not health workers, in every medical service and not administrative and managerial services in a public institution. Because if so, the position of doctors as medical personnel will have an impact on services that are counterproductive to their duties and profession.

5. Conclusion

Implementation of Doctor's Medical Services Based on the Constitutional Court Decision Number 82/PUU-XIII/2015, is not implemented as the decision. The judge's decision has permanent legal force and is therefore binding to be implemented, because the basis of the petition for review is the constitutional rights of the aggrieved applicant, and the action represents the legal interests of the entire community, namely the upholding of the constitution.

Empirically / field facts (De facto) the judge's decision has no effect on the profession of doctors as medical personnel. Doctors have deviated from their profession as health workers. Doctors have performed counterproductive services as Medical personnel / Doctors, such as

occupying structural positions, both in government and private institutions that are not their profession. The implementation of the decision is likened to “far from the fire”, because doctors still take on the duties and responsibilities of health workers who are their profession.

The counterproductive work behavior of doctors as medical personnel after the decision of the Constitutional Court cannot be fully carried out because of the dualism understanding stated in the Health Law No. 17 of 2023 and Regulation of the Minister of Health No. 28 of 2024 that health human resources are someone who works actively in the field of health, both those who have formal health education or not, which for certain types requires authority in carrying out health efforts.

Thus, people who work in the health sector, namely medical personnel, pharmaceutical personnel and other professional personnel. This causes doctors who are medical personnel, on the one hand, to continue to function as medical personnel but on the other hand at the same time function as health workers. This understanding makes doctors as medical personnel in their services behave counterproductive work, because there is a dualism of duties and functions of medical personnel both as medical personnel but also as health workers. The effectiveness of doctors as medical personnel is often neglected because of the positions they hold as other health workers. One of them is holding the position of head of the health center or head of the department which is a structural position, not a functional position. This phenomenon continues to this day, even though the Constitutional Court decision has revoked the article on doctors as health workers.

The decision of the Constitutional Court Judges has closed the space for medical personnel as health workers. Article 11 (paragraph) 1 and (paragraph) 2 a quo, regulating health workers including medical personnel consisting of doctors, specialist doctors, dentists and specialist dentists is understood as an article that has contradicted the 1945 Constitution. The position of doctors as health workers in this Law is considered wrong in the logic hierarchy and legal policy structure because it cannot distinguish between professional staff (doctors and dentists) and vocational staff because vocational staff are not professional staff. but in reality das sein the position of doctors as medical personnel is not carried out in accordance with the judge's decision.

Recommendations, the formation of a legislation needs to pay attention to the hierarchy of laws and regulations so as not to cause erroneous legal interpretations, especially defining it using clear legal language so that it is easy to understand and run by all citizens. To medical personnel can carry out their service duties in accordance with their medical profession, which has been decided by the Constitutional Court. To users of medical services to improve medical services to patients and not to occupy administrative positions in government and private institutions.

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