JURIDICAL REVIEW OF LEGAL PROTECTION OF HEALTH PERSONNEL ACCORDING TO INTERNATIONAL AND NATIONAL LAW

Ari Andayani[1*], Agus Kurniawan[2]
[1,2]University of Udayana, Bali
E-mail: [1)] ari.andayani77@gmail.com, [2)] aguskurniawan0179@gmail.com

Abstract

Health represents a fundamental ideal of the Indonesian nation and serves as an embodiment of human rights. To ensure a high standard of health, the role of Health Workers is pivotal. However, several incidents have highlighted the prosecution or attacks on these workers during the provision of services, revealing a deficiency in both national and international legal protections. This research aims to analyze the legal protection arrangements for health workers in accordance with National and International Law, as well as identify the factors contributing to the non-compliance with legal protection regulations for health workers. The research is of a normative legal nature, employing a statutory and case-based approach. Data was collected through a comprehensive literature review using qualitative descriptive analysis. The findings of the study indicate that the legal protection for health workers has been outlined in National Law under Law no. 36 of 2014, while International Humanitarian Law serves as the framework for granting legal protection to Health Workers on an international scale. Factors contributing to the non-compliance with national legal protection regulations for Health Workers include Educational, Trust, and Environmental Factors. On the other hand, the non-compliance with legal protection regulations for Health Workers in the context of international law is primarily due to a lack of understanding and awareness of International Humanitarian Law, compounded by the challenges faced during times of conflict between nations.

Keywords: *Health Workers, Humanitarian Law, Legal Protection*

1. INTRODUCTION

Health represents the embodiment of human rights and the ideals of the Indonesian nation as outlined in the 5th Pancasila. The pursuit of social justice in health stands as a key objective for the Indonesian nation, aiming to elevate the overall public health standards in line with the principles of non-discrimination, protection, and sustainability (Koswara, 2018). Furthermore, the Preamble to the 1945 Constitution echoes this sentiment, emphasizing the promotion of general welfare, with a specific focus on the welfare of public health. Health serves as a crucial aspect and a significant benchmark for evaluating whether the societal welfare in Indonesia has been adequately and optimally fulfilled (Sugiharto, 2012; Hanif, 2022).

To achieve Indonesia's goals, the role of health workers is vital. According to Law No. 36 of 2004, Health workers are individuals who serve in the health sector with knowledge and skills that require authority to provide services. Health workers have a great social responsibility in carrying out care for patientsIn service, health workers must try their best in the interests of patients without promising results (Arif & Utomo, 2022).

The important role of health workers in determining the safety of patients means that health workers are required to minimize mishandling or malpractice. This regulation of malpractice problems is not only anticipatory so doctors and other medical

professionals must be careful in providing services and also protect the rights of patients as legal subjects in a country with democratic laws (Diab, 2019). However, medical services do not always succeed according to plan, this is the basis for establishing legal protection for health workers if the health services according to standards

Legal protection for health workers has become a concern in national law and international law. Legal protection is the protection of honor and recognition of human rights by legal subjects in accordance with legal provisions to protect something (Alydrus et al., 2020). Legal protection for national health workers is contained in Article 27 (1) of Law No. 36/2014 states that health workers have the right to receive compensation and legal protection when carrying out their duties. Apart from that, it is also strengthened in Article 57 letter a of Law No. 36/2014 states that health workers who provide services have the right to obtain legal protection as long as they carry out their duties in accordance with Professional Standards. Meanwhile, according to international law, the protection of international health workers is regulated in the Geneva Conventions and additional protocols. In article 24 of Geneva Convention I 1949, Article 12 (1), Article 8, and Article 21 of Additional Protocol II as well as Articles 9 and 11 (1) state that health units must be protected at all times and must not be targets of attack. Including someone who is assigned, either permanently or temporarily, solely for medical work (Prastika, 2020).

The protection of Health Workers aims to instill a sense of security for those providing health assistance to injured or ill individuals. This is manifested in the prohibition of any attacks on Health Workers. However, in practice, the implementation of this regulation remains challenging, as evidenced by various cases of attacks on health workers worldwide. Instances include attacks on health workers in Palestine and assaults by the Armed Criminal Group (KKB).

The existence of legal protection for health workers based on international law and national law cannot fully protect health workers on duty. In reality, legal protection for health workers is difficult to implement ideally and consistently according to existing legislation. This is proven by the many cases of lawsuits against doctors and deaths of doctors in international conflict areas. So it is necessary to optimize national and international legal protection policies for health workers.

Based on the problems above, it can be concluded that legal protection for health workers is still not optimal. Health workers who help patients actually endanger their lives through dangerous demands and physical attacks. So it is necessary to conduct a study regarding "Judicial Review of Legal Protection of Health Workers According to International and National Law". The aim of this research is to analyze legal protection arrangements for health workers in accordance with National Law and International Law and analyze the factors causing non-compliance with legal protection regulations for health workers.

2. LITERATURE REVIEW

2.1. Health

Health is a condition of physical, spiritual, mental and social health that makes a person socially and economically productive (Law No. 36/2014). Health is a state where not only is there no disease or weakness, but there is also a balance between physical function, mental, and social (Jacob & Sandjaya, 2018).

2.2. Health Workers

Health workers are individuals who serve health services with the knowledge and skills to carry out service authority (Law No. 36/2014). The authority legally possessed by a health workers to serve is within their authority, so that the health worker has full power in carrying out work according to his field of knowledge (Lambok & Asyiafa, 2019). According to Government Regulation no. 32 of 1996, Health Workers include medical personnel; nurse; pharmacy; public health workers; nutrition staff; physical therapy personnel as well as medical technicians.

2.3. Legal Protection of Health Workers

Legal protection is related to law enforcement, which is a separate process in society which aims to maintain law and order (Rahardjo, 2006). Legal protection for health workers has become a concern in national law and international law. Legal protection is the protection of honor and recognition of human rights by legal subjects in accordance with statutory provisions to protect them (Alydrus et al., 2020). Legal protection for Health Workers is regulated nationally in Law no. 36 of 2014 and internationally in the Geneva Conversion.

3. RESEARCH METHODS

3.1. Type of Research

This research is of the type of normative legal research. Normative legal research is legal research according to the analysis of applicable and relevant legislation on legal issues (Benuf, Mahmudah, dan Priyono 2019). In the normative juridical writing method, the author examines positive legal provisions in order to find legal rules, principles and doctrines in answering legal problems (Michael & Boerhan, 2020).

3.2. Research Approach

This research uses a statutory and case-based approach. The legal problem approach is an approach through studying legislation related to the problem (Marzuki, 2014). Meanwhile, the case study problem approach (Case Approach) is research that conducts studies of cases related to issues that become court decisions (Marzuki, 2014).

3.3. Legal Source

The research uses legal material sources which include primary and secondary legal material sources. Primary legal materials are the main legal materials, as authoritative legal materials, namely legal materials that have authority (Suardita, 2017). The primary legal material for the research is Law no. 36 of 2014, Civil Code, and Geneva Conversion. Meanwhile, Secondary legal materials are legal documents that explain problems, such as books, journals and literature related to research (Suardita, 2017). Secondary legal material for research was obtained from journals and literature regarding national or international legal protection of health workers.

3.4. Collecting of Legal Materials

Collecting legal materials through literature study as an activity of collecting data, reading, taking notes and processing (Supriyadi, 2017). The literature study was carried

out through reviewing reference books and similar research results to obtain a theoretical basis for the research (Sarwono, 2006).

3.5. Data Analysis Method

The data analysis technique is through qualitative descriptive analysis. The basis for using this legal analysis is normative, because legal materials towards theoretical studies including principles, concepts and legal rules.

4. RESULTS AND DISCUSSION

4.1. Legal Protection Arrangements for Health Workers in accordance with National Law and International Law

Legal protection for Health Workers is important in providing safe health services. This legal protection means protection for providers and recipients of health services (Asyhadie, 2017). If a health worker is harmed by another party intentionally or due to negligence, then the health worker has the right to seek civil, criminal or state administrative legal responsibility, as well as compensation (Ridwan, 2006).

In national law, legal protection for Health Workers is regulated in Article 57 of Law No. 36/2014. where health workers have the right to a) Obtain legal protection as long as they carry out their duties according to the Standards; b) Obtain complete and correct information from service recipients; c) Receive service compensation; and d) Get safety protection in accordance with human dignity. This Health Law is preventive protection provided to health workers through the contents of regulations and articles that regulate legal protection. This can prevent violations and provide limits on carrying out obligations. Meanwhile, repressively, the legal protection provided consists of imposing sanctions on health workers who are negligent in providing health services as well as sanctions against someone who harms health workers.

Meanwhile, in international law, legal protection for Health Workers are organized in International Humanitarian Law, which is a law that regulates the protection of people who do not participate in conflict or war (Sujatmiko, 2016). Humanitarian law protects medical personnel as parties who do not participate in disputes or can be said to be non-combatants where medical personnel must be protected at all times and must not be the target of attack (Prastika, 2020). The following are several regulations containing legal protection for health workers, namely:

1) Article 24 of the 1949 Geneva Convention I, protection for medical personnel has been regulated in the 1949 Geneva Convention I Chapter IV Article 24 which states that Health services employed in searching for, transporting and caring for injured persons must be protected in all circumstances.
2) Article 12 (I) of the 1977 Additional Protocol I states that protection for medical personnel has been regulated in Article 12 Protection of health units.
3) Article 9 (1) Additional Protocol II 1977 states that protection for medical personnel has been regulated in Article 9 (1) Protection for members of health services and religious services Health workers must be protected and provided with assistance. They should not be forced to serve on other missions.
4) Article 8 of the 1977 Additional Protocol I states what health facilities must be protected, namely as followssuch as hospitals and treatment centers, storage places

for health equipment and medicines and these units. These health units can be immovable or movable objects, permanent or temporary

To differentiate between health workers, civilians and soldiers in conflict countries, distinctive emblems have been regulated. Identification symbols are used by medical personnel to differentiate themselves from other parties to an armed conflict. Identification symbols also function to protect medical personnel from the armed forces from becoming targets of attack (Prastika, 2020). According to the 1977 Additional Protocol II Article 12, the identification symbol must be displayed correctly, and only those authorized to use it legally and must not be used as an object of attack. Apart from providing protection for individual medical personnel, Humanitarian Law also provides protection for health facilities where medical personnel work.

Protection of health workers is regulated in Article 26 of the 1949 Geneva Convention which states that voluntary health workers, recognized voluntary organization and authorized by their governments, who carry out the same duties as the health services mentioned in Article 24, of equal status, and must obey military law. The protection of health workers in the 1949 Geneva Convention I and Additional Protocol I 1977 is based on personal respect and the inviolability of the basic rights of both men and women. Someone who is not directly involved in combat, such as health workers, has the right to be respected and protected under all circumstances and treated with humanity. Direct attacks on health workers and health facilities constitute a violation of the rights obtained in the 1949 Geneva Conventions and the 1977 Additional Protocol (Prastika, 2020).

The implementation of the Geneva Conventions is a guarantee of human rights during war as stated in international humanitarian law, which is expected to be the management and control of the destructive effects of armed conflict (minimizing the number of human and property casualties) which indirectly reveals that international humanitarian law is not intended to prohibit war or to conduct war. legal regulations regarding war games, but for humanitarian reasons (Guevarrato et al., 2014). This law has the objectives of: a) Providing protection for combatants and non-combatants from unnecessary suffering, b) Guaranteeing very fundamental human rights for those who fall into the hands of the enemy and c) Preventing cruel wars without borders.

In addition, the International Red Cross provides legal protection to members of the health board and volunteers who are members of the International Committee of the Red Cross (ICRC) as regulated in the 1949 Geneva Convention Article 24 which states that: Health workers are employed to search for, transport or treat injured victims and must be protected in all circumstances (Rahmatullah et al., 2022).

Article 26 of the 1949 Geneva Convention states: Members of the National Red Cross and recognized Voluntary Aid Societies can serve as health workers in accordance with article 24 in compliance with military law. Each Participant must notify the other Party regarding peacetime at the beginning or throughout the course of a hostile conflict. Attacks on health workers are a violation of International Humanitarian Law. Article 9 of Additional Protocol II of 1977 states that members of health services must be protected and provided with assistance for the implementation of health services and must not be asked to give priority to anyone except for medical reasons.

All attacks aimed at all equipment and units of medical personnel as well as members of the health service only aim to prevent medical officers and medical units

from being able to help and treat war victims who need medical assistance. This is also explained in the 1949 Geneva Convention I Article Additional Protocol I 1977 Article 12 Paragraph 1 for international armed disputes and Additional Protocol II 1977 Article 11 Paragraph (1) for non-international armed disputes which states that health units and transport must be protected at all times and must not be objects attack.

4.2. Factors causing non-compliance with legal protection regulations for Health Workers

The national health law aims to provide legal protection to society of health services and health workers as providers of health services so that they can get maximum service. Meanwhile, international health law or international humanitarian law aims to regulate the tools and procedures for war, protect war victims, and guarantee respect for a person's personal dignity (Sihite, 2018). The role of these two health laws is very vital in providing optimal and safe services for patients and health workers.

However, based on the reality, there are still many cases of legal inability to provide legal protection to health workers. This can be proven by the existence of a young doctor in the name of Dewa Ayu Sasiarsy who was once sentenced to prison by the Supreme Court (MA) for failing to save the fate of his patient from a sudden operation, but was ultimately released because the doctor was not proven to have committed malpractice. In international health law, there are also many cases of non-compliance with the law, such as attacks on Health Workers and Health Facilities by conflicting parties in Syria and Israel.

Based on national health law, there are several factors that cause non-compliance with legal protection regulations for Health Workers, including:

1) Education Factors

In a simple sense, education related to efforts to develop personality according to community and cultural values (Baragi et al., 2021). A person who does not have education regarding the legal regulations governing the legal protection of health will have a high potential for violating the established regulations. If people do not have knowledge of health regulations, it is possible for people to make baseless demands for health services that they feel are unsatisfactory.

2) Trust Factors

Trust is a belief system or something that a human group believes exists or is true (Baragi et al., 2021). Regarding the trust factor, it can be seen from the public's willingness to receive health services at certain units. For dangerous health service actions, health workers also provide Informed Consent as approval for the health services being carried out. So if patients believe in the health actions carried out by health workers, non-compliance with the law will be minimized. An individual will more easily comply with social norms that are indoctrinated by the beliefs they hold (Baragi et al., 2021).

3) Environment Factors

Compliance that is formed in a conducive environment will make individuals feel great benefits and use it for a longer period of time (Baragi et al., 2021). An environment that adheres to a rule will encourage other people to understand the rule. This process underlies behavior in a new environment, the adaptation process will be easier.

Meanwhile, the implementation of international health law has several factors inhibiting compliance with legal protection regulations for Health Workers, namely: (Tandris, 2019)

1) International Humanitarian Law must be applied at a very difficult time, namely the stability and national security of a country is being threatened
2) International Humanitarian Law is very complex. The Geneva Conventions and Additional Protocols were drafted by legal experts and diplomats where the terms and sentence structures used are difficult for the general public to understand.
3) Various provisions of International Humanitarian Law are not operational in nature or cannot be applied directly to provide punishment

Then, there are also factors related to the challenges in implementing International Humanitarian Law. These obstacles become apparent when International Humanitarian Law is applied in the context of war, and they include:

1) Insufficient awareness about the required implementation actions at the national level. Civil and military officials in various government agencies often lack the necessary awareness of their obligations to take specific actions.
2) Limited expertise within agencies. The legal complexities involved in the implementation of International Humanitarian Law are quite intricate, and there are few legal experts who possess a comprehensive understanding of these issues.
3) The implementation of International Humanitarian Law involves the collaboration of various government bodies, such as the Ministry of Defense, Law and Legislation, Home Affairs, and the Ministry of Foreign Affairs. Effective execution of International Humanitarian Law necessitates seamless cooperation among these agencies, which is often difficult to achieve and time-consuming.
4) The most significant challenge arises from the conflict of diverse interests. Certain provisions of the Geneva Conventions, especially their Additional Protocols, might be perceived as limiting state sovereignty or jeopardizing military security.

Lack of knowledge regarding International Humanitarian Law makes it difficult to implement International Humanitarian Law. Insufficient basic knowledge of International Humanitarian Law triggers a lack of awareness regarding the understanding that medical personnel should always be protected, and should not be used as targets for attacks in war. Not only is knowledge about International Humanitarian Law lacking, but the unwillingness of the conflicting parties to comply with International Humanitarian Law can also be the cause of the many violations that still occur.

5. CONCLUSION

The research concludes that: a) National legal protection arrangements for health workers are outlined in Law no. 36 of 2014 concerning Health Workers, which stipulates that health workers have the right to legal protection while carrying out their duties in accordance with the established standards. In international law, Health Workers are granted protection under International Humanitarian Law, which prohibits attacks on health workers and facilities. b) Factors contributing to the non-compliance with legal protection regulations for Health Workers, according to national law, stem from

Educational Factors, Trust Factors, and Environmental Factors. Conversely, the non-compliance with legal protection regulations for Health Workers under international law is primarily attributed to a lack of knowledge and awareness of International Humanitarian Law, as well as challenges in implementing the law, especially during times of conflict between countries.

The research suggests that the Indonesian Government should clarify the legal protection for Indonesian health workers both domestically and abroad to provide enhanced legal certainty.

REFERENCES

Alydrus, S. M. Z., Suhadi, & Lutfitasari, R. (2020). Legal Protection Against Consumers Pt. Pln (Persero) Balikpapan Related Power Outage. *Jurnal Lex Suprema, Vol 2 No 1*.

Arif, C. S., & Utomo, M. S. (2022). The Rights Of Health Personnel To Refuse Health Services That Do Not Accord To Hospital Er Standards In Semarang. *Jurnal Ilmu Sosial, Pendidikan Dan Humaniora (JISPENDIORA), Vol 1, No 2*. https://doi.org/https://doi.org/10.56910/jispendiora.v1i2.587

Asyhadie, H. Z. (2017). Aspects of Health Law in Indonesia. *PT. Raja Grafindo Persada, Jakarta, Hlm. 5.*

Baragi, D. I., Boro, V. I. ., & Tokan, F. B. (2021). Analysis Of The Causes Of Community Non-Compliance On Using A Mask In The Middle Of The Pandemic Covid-19 At Penfui Market, Penfui Village. *Jurnal Pemerintahan Vol.2 No.1*.

Benuf, K., Mahmudah, S., & Priyono, E. A. (2019). Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology Di Indonesia. *Refleksi Hukum: Jurnal Ilmu Hukum, 3*(2), 145–160. https://doi.org/10.24246/jrh.2019.v3.i2.p145-160

Diab, A. L. (2019). Legal Protection Against Medical Offenders In Positive Criminal Law and Islamic Criminal Law. *Al-'Adl, Vol. 12 No. 2*.

Guevarrato, G., Bagus, I., Ana, O., & Arundhati, B. G. (2014). Analisis Hukum Konflik Bersenjata Antara Palestina Dan Israel Dari Sudut Pandang Hukum Humaniter Internasional. *Artikel Ilmiah Hasil Penelitian Mahasiswa, I(1), 1–10.*

Hanif, M. I. (2022). Analisis Hukum Kesehatan Atas Tindakan Malpraktik Medis Oleh Tenaga Medis. *Jurnal Juristic, Vol 3, No 03*.

Jacob, D. E., & Sandjaya. (2018). Factors That Affect The Quality Of Life Of The Karubaga Community District Sub District Tolikara Papua Province. *Jurnal Nasional Ilmu Kesehatan (JNIK) Volume 1*.

Koswara, I. Y. (2018). Protection Of Health Personnel From A Regulation Perspective The Health Field Is Linked To Law Number 36 Concerning Health And Social Security System. *Jurnal Hukum POSITUM Vol. 3, No. 1, Hal 1-18*.

Lambok, B. D., & Asyiafa, A. P. (2019). Legal Responsibility of Medical Personnel in the Act of Installing Oral Breathing Devices (Ventilators) on Patients in Hospitals. *Jurnal Syntax Literate*. https://doi.org/https://dx.doi.org/10.36418/syntax-literate.v4i12.830

Law Number 36 of the Year. (2014). Health workers. Indonesian government.

Marzuki, P. mahmud. (2014). *Penelitian Hukum*. Kencana Prenada Media Grup.

Michael, T., & Boerhan, S. (2020). Negara Dan Eksistensinya Dalam Privasi Subjek

Hukum. *Jurnal Hukum Magnum Opus*, *3*(2), 173–180. https://doi.org/10.30996/jhmo.v3i2.3414

Prastika, R. D. (2020). Legal Protection Of Personnel Medical In War Area According International Humanitarian Law. *Lex Et Societatis Vol. VIII/No. 2*.

Rahardjo, S. (2000). *Ilmu Hukum*. PT. Citra Aditya Bakti.

Rahmatullah, Z., Wattimena, J. A. Y., & Anwar, A. (2022). Protection of Voluntary Health Workers in Areas of Armed Conflict According to International Law. *Jurnal Ilmu Hukum, Volume 1 Nomor 12, 1186 – 1195.*

Ridwan, H. (2006). State Administrative Law. *Raja Grafindo Persada, Jakarta,Hlm. 337.*

Sarwono, J. (2006). *Metode Penelitian Kuantitatif dan Kualitiatif.* Graha Ilmu.

Sihite, A. D. (2018). Efforts Of The International Committee Of The Red Cross (Icrc) In Enforcement Of Article 27 Of The Convention Geneva Iv For Women In The Yemen Conflict. *Journal Ilmu Hubungan Internasional, 6 (3) 1153-1168.*

Suardita, I. K. (2017). Penganalan Bahan Hukum (PBH). *Simdos.Unud.Ac.Id*, 3.

Sugiharto, E. (2012). Tingkat Kesejahteraan Masyarakat Nelayan Desa Benua Baru Ilir Berdasarkan Indikator Badan Pusat Statistik. *Jurnal EPP Vol. 4 No. 1.*

Sujatmiko, A. (2016). Human Rights Law and Humanitarian Law. *Penerbit PT.Raja Grafindo Persada, Jakarta, Hlm.171.*

Supriyadi, S. (2017). Community of Practitioners: Solusi Alternatif Berbagi Pengetahuan antar Pustakawan. *Lentera Pustaka: Jurnal Kajian Ilmu Perpustakaan, Informasi Dan Kearsipan*, *2*(2), 83. https://doi.org/10.14710/lenpust.v2i2.13476

Tandris, V. (2019). Protection for Medical Personnel in Armed Conflicts Under International Humanitarian Law. *Lex Et Societatis, Vol. 6 No. 1.*

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (http://creativecommons.org/licenses/by/4.0/).