



Discontinuity in Regulations Regarding Health Workers in Health Law Legislation with the Principle of Legal Certainty

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Abstract. The discontinuity of regulations concerning health workers in health law legislation poses a challenge for the application of the principle of legal certainty in Indonesia. The principle of legal certainty is an essential foundation in the legal system that guarantees the rights and obligations of health workers and the community. However, there is a gap between the regulations for health workers and the principle of legal certainty, which impacts the clarity of the legal status, rights, and obligations of health workers. This research aims to examine the discontinuity between health workers' laws and the application of the principle of legal certainty, as well as the impact arising from this inconsistency. Additionally, this research identifies efforts that can be made to align labor regulation and health worker regulations with the principle of legal certainty. Using normative legal research methods through legislative and conceptual approaches, this study finds that regulatory harmonization is necessary to strengthen legal certainty in health worker regulation in Indonesia.

Keywords: health, workers, legal, certainty, law

1. INTRODUCTION

Health is a fundamental need for every individual, making the right to health a legal entitlement. Each country acknowledges that health is a primary factor in achieving societal welfare. Thus, improvements in health services should be viewed as an investment in human resources to create a prosperous society. [1] In developing countries like Indonesia, enhancing people's welfare requires the government's role in providing public services to meet basic needs, including health, education, and other essential commodities. The state has a significant responsibility in fulfilling the basic needs of the people, particularly in providing comprehensive health services while recognizing health as one of the human rights. This right is inherent to the existence and nature of humans as God's creatures and is a gift that must be respected, upheld, and protected by the state, law, government, and every individual to maintain human dignity and honor. [2]

From a human rights perspective, health is inseparable from other rights. When an individual's health condition is compromised, their other rights are also hindered. An unhealthy individual will lose the right to live decently, cannot work well, cannot enjoy the right to assemble and associate, is limited in expressing opinions, and cannot receive a proper education. [3] Therefore, the inability of an individual to enjoy these rights violates the very essence of human life. The recognition of the importance of health as a human right and as a

prerequisite for the realization of other rights has been recognized internationally. The right to health includes the right to a healthy life and work, the right to adequate health services, and special protection for maternal and child health. [4] At the national level, Article 28 H paragraph (1) of the 1945 Constitution (UUD 1945) states that every individual has the right to live well, both physically and mentally, to have a place to live, to have a healthy living environment, and to receive health services. Article 9 of Law Number 39 of 1999 on Human Rights states that everyone has the right to live, to defend life, and to improve their standard of living while having the right to live in peace, security, happiness, and well-being, both physically and mentally, along with the right to a good and healthy environment.

Guaranteeing the right to optimal health is also enshrined in Article 4 of Law Number 23 of 1992 on Health. The government's obligation to fulfill the right to health as a human right is also grounded in international law within Article 2 paragraph (1) of the International Covenant on Economic, Social, and Cultural Rights. Article 28 I paragraph (4) of UUD 1945 regulates that the protection, advancement, enforcement, and fulfillment of human rights is the responsibility of the state, especially the government. The obligation of the Indonesian government to realize this is further emphasized in Article 8 of the Human Rights Law. In the health sector, Article 7 of the Health Law states that the government is obligated to provide equitable and accessible health efforts to all layers of society. Article 9 of the Health Law emphasizes the government's responsibility to improve the degree of public health. [5]

Regulation regarding health workers plays a very important role in ensuring that every citizen has access to quality, affordable, and equitable health services. [6] Competent, licensed health workers who comply with existing regulatory provisions are key elements in achieving optimal health services. This regulation governs educational standards, training, licensing, and competencies of health workers, thus ensuring their professionalism in providing medical services that fit community needs. Consequently, clear and appropriate regulations can ensure that health workers in Indonesia have the sufficient capacity to provide the best care while ensuring that the rights of the community to obtain proper health services can be well-fulfilled.

The fulfillment of the right to health services is closely related to the principle of human rights, which is a basic right that cannot be revoked from any individual. Indonesia, as a country based on Pancasila, has health rights as an integral part of the effort to uphold human dignity, as stated in various national and international regulations. In this regard, the state has the obligation to protect and fulfill the health rights of every citizen as part of the effort to realize social justice. [7] This is also in line with the goals of the Indonesian state as stated in

the Opening of the 1945 Constitution, which is to create a just and prosperous society. Therefore, the fulfillment of the right to health services is part of the state's responsibility to ensure the welfare of the people, which should be accessible to all layers of society without discrimination.

The importance of quality, just, and equitable health services across Indonesia, both in urban and remote areas, becomes one of the fundamental principles in building a sustainable health system. Good health worker regulations play an essential role in ensuring the even distribution of health workers accessible to all communities without exception. In remote areas or regions with limited resources, appropriate regulations will ensure that health workers are available and can provide services equivalent to those in more advanced areas. This also includes protections for health workers, ensuring they can work in safe and supportive conditions while reducing disparities in the quality of health services across different regions. Thus, the equitable distribution of health workers becomes a key to creating a healthcare system that is not only effective but also inclusive and fair. [8]

The discontinuity in health worker regulations in Indonesia is clearly visible in the differences in regulations between various laws governing health professions and their implementing regulations. For example, Law Number 29 of 2004 on Medical Practice and Law Number 36 of 2014 on Health Workers regulate matters related to the professions and authorities of health workers, but often there are inconsistencies in technical matters detailed in their implementing regulations, such as Government Regulations or Ministerial Regulations. This discontinuity results in differing interpretations, potentially confusing health workers and authorities in understanding their obligations and rights, ultimately diminishing the effectiveness of healthcare services.

Such regulatory discontinuity can lead to potential conflicts of norms that not only confuse health workers but also authorities in the enforcement of the law. For instance, if there are differences between provisions in laws and more detailed technical regulations, health workers may find themselves caught in legal dilemmas or conflicting obligations, adversely affecting their performance. This situation also influences authorities in law enforcement, as they must decide which rules take precedence or align with applicable norms. This lack of clarity certainly disrupts policy implementation and creates legal uncertainty for health workers and the communities receiving services.

The drafting of consistent and integrated regulations between laws and their implementing regulations is crucial to avoid confusion in the application of law. Integrated and harmonious regulations will ensure that health workers have a clear understanding of

their rights, obligations, and responsibilities, enabling them to execute their duties more effectively and efficiently. Additionally, consistent regulations will offer legal certainty to health workers and the community, reducing the risk of violations or abuses of rules and enhancing professionalism in the health sector. Thus, it is essential to undertake efforts to formulate and implement regulations that support and reinforce each other between the laws and technical regulations.

This research will briefly discuss the discontinuity between laws governing health workers and their implementing regulations, which can create legal uncertainty for both health workers and authorities. The inconsistency or discontinuity between various regulations may hinder the performance of health workers' duties and create confusion in the application of legal rules. Furthermore, this research raises the issue of applying the principle of legal certainty in the regulation of health workers, specifically whether the principle of legal certainty has been applied consistently across existing regulations. Efforts are required to improve the implementation of this principle so that a clear, structured, and understandable legal system can be created for all parties involved, thus facilitating the achievement of optimal and equitable healthcare services.

2. METHOD

The normative legal research method is employed in this legal study, focusing on the study of documents and legal norms. This method aims to analyze the applicable legal rules and how these rules are applied or interpreted within a specific regulation. In normative legal research, primary sources include laws and other legal literature. This approach is very relevant in investigating theoretical and conceptual legal issues, such as the need to explore the discontinuity between laws related to health workers and the application of the principle of legal certainty in regulating health workers. And the impact and measures regarding the discontinuity between labor law regulations and the principle of legal certainty. One of the approaches used in this method is the legislative approach (statute approach) and the conceptual approach (conceptual approach). [9] The legislative approach involves reviewing and analyzing various regulations governing specific issues, such as Law Number 36 of 2014 on Health Workers and related regulations. Through this approach, researchers can discuss the necessity of exploring the discontinuity between laws concerning health workers and the application of the principle of legal certainty in health worker regulation. Additionally, the

impact and efforts regarding the discontinuity in labor law regulations with the principle of legal certainty.

3. RESULT AND DISCUSSION

Discontinuity Between Laws Relating to Health Workers and the Application of the Principle of Legal Certainty in Health Worker Regulation

The definition of health workers is established in Article 1 point 6 of Law Number 36 of 2009 on Health, stating that health workers are individuals who dedicate themselves in the health sector and possess knowledge and/or skills acquired through education in health, and for certain types, require authority to carry out health efforts. Specifically, the regulation regarding health workers is described in Chapter V on Health Resources, which includes Articles 21 to 29 of the Health Law. However, these articles do not provide a comprehensive regulation, and there are contradictory provisions. The regulation of health workers in the Health Law only includes nine articles in the chapter on Health Resources, which then mandates that further provisions on health workers be regulated by other laws. Besides, three aspects are regulated through government regulations; these aspects cover the education and training of health workers, placement of health workers, and the rights and obligations of health workers.

Three other aspects are governed by ministerial regulations, which cover the minimum qualifications of health workers, licensing of health workers, as well as provisions regarding the rights of health service users, service standards, and standard operating procedures. This law also mandates professional organizations to formulate regulations related to code of ethics and professional standards. Consequently, regulations pertaining to health workers solely referring to the Health Law are deemed insufficient to comprehensively cover regulatory needs in the health worker sector, which features very specific characteristics and aspects that necessitate additional regulations in the form of laws, government regulations, ministerial regulations, or regulations from professional organizations.

In Law Number 44 of 2009 on Hospitals, hospitals regard all individuals working in hospitals as part of the human resources (HR), without specifically mentioning health workers. This is regulated in Article 12 of the Hospital Law, which sets out qualifications for human resources in hospitals, stating that hospitals must have permanent staff consisting of medical professionals and medical support staff, nursing staff, pharmaceutical staff, hospital management staff, as well as non-health staff. The number and type of personnel must be

adjusted to the type and classification of the hospital, and hospitals are required to maintain data regarding the personnel performing practices or duties within the hospital.

Article 13 of the Hospital Law regulates that medical staff and certain health workers working in hospitals must possess a permit. Medical personnel practicing medicine in hospitals must have a practice license in accordance with the prevailing regulations, and other specific health workers working in hospitals are also required to have a permit in accordance with those regulations. The explanation of Article 13 paragraph (2) of the Hospital Law specifies that the term certain health workers includes nurses, midwives, dental nurses, pharmacists, assistant pharmacists, physiotherapists, optical technicians, speech therapists, radiographers, and occupational therapists. The aforementioned permits refer to work permits or practice permits for health workers.

Based on this explanation, the definition of health workers according to the Hospital Law is limited to certain health workers only, and there is no further explanation regarding whether other staff members are included in the health workers category working in hospitals. Furthermore, Articles 13 paragraphs (3) and (4) of the Hospital Law stipulate that every health worker working in hospitals must carry out their duties in accordance with professional standards, service standards in hospitals, prevailing standard operating procedures, professional ethics, while respecting patients' rights and prioritizing patient safety. This provision implicitly implies that the personnel referred to in the hospital are medical professionals and health workers who comply with applicable regulations.

In Law Number 36 of 2014 on Health Workers, the definition of health workers according to the Health Workers Law is stated in Article 1 paragraph (1) Chapter I General Provisions, which states that health workers are individuals who dedicate themselves in the health sector and possess knowledge and/or skills gained through education in health. For certain types, these health workers require special authority to implement health efforts.

Legal certainty can be comprehended in three aspects: first, certainty regarding legal provisions regulating government matters that are abstract in nature; second, certainty regarding the legal status of subjects and objects of law in the implementation of state administration regulations; and third, prevention of arbitrary actions (*eigenrecht*) from any party, including the government. In the regulation of health workers, such as medical workers, nursing staff, pharmaceutical staff, and midwifery staff, these regulations have met the characteristics of legal certainty in the first two aspects, related to the regulations governing abstract government matters and the legal status of legal subjects and objects in the implementation of state administration regulations. However, concerning the third aspect,

which is the prevention of arbitrary actions, there remains the potential for legal uncertainty. This is due to the differences in terminology concerning health workers regulated in various laws, such as the Health Law, the Hospital Law, and the Health Workers Law, which can lead to differing interpretations according to the interests of the parties holding the authority, thereby potentially resulting in inconsistencies and arbitrary actions in implementation.

Legal certainty can be understood as the state where one can achieve the expected outcomes in a certain situation. Legal certainty entails having clear norms that can serve as guidelines for the society bound by those regulations. Therefore, legal certainty implies clarity and decisiveness regarding the applicability of law within society, aimed at avoiding misinterpretation. Legal certainty also encompasses public behavioral scenarios that are general and binding on the entire society, as well as the legal consequences that arise from certain behaviors. In the regulation of health workers, this concept of legal certainty highlights the importance of clear norms to prevent misunderstandings.

Referring to the provisions in Article 21 of the Health Law, which regulates planning, procurement, utilization, development, and quality supervision of health workers, there is a potential for a norm conflict between Government Regulation and the Law. Article 21 paragraph (2) states that these provisions are regulated in Government Regulation, while Article 21 paragraph (3) mentions that provisions concerning health workers are regulated in the Law. This may lead to a norm conflict between the two, ultimately reducing legal certainty. Furthermore, although the Health Workers Law mentions 13 types of health workers, the differing levels of regulation among these health workers may lead to injustice in legal implementation in Indonesia. Based on the theory of the hierarchy of regulations, laws possess binding authority for all citizens and related parties, both subjects and objects governed by that law.

In health worker regulation, the principle of legal certainty should be reflected in every article or provision within the statutory regulations. If the principle of legal certainty is made a reference in the formulation of articles, then such regulation can provide legal certainty guarantees. Conversely, if the principle of legal certainty is not used as a foundation in regulation formulation, then the regulations are likely to give rise to various differing interpretations, diminishing clarity and decisiveness while leading to normative conflicts.

However, the current regulation of health workers in Indonesia does not guarantee legal certainty. This is due to the presence of conflicting norms, incompleteness, disorganized dissemination, and inconsistencies in legislation. The principle of legal certainty has not fully been incorporated in the formulation of norms and often only exists in the articles of the law,

equating its position with other norms, thus not being treated as the primary source of legal regulation. Other facts indicating a lack of legal certainty are the frequent judicial reviews of norms within health worker-related laws. Additionally, continual changes in technical regulations (Ministerial Regulations) illustrate inconsistencies that complicate practical implementation. The potential for norm conflict is also apparent in Article 21 of the Health Law, which states that health worker regulation can be conducted through Government Regulations as well as the Law, which risks generating conflicting norms. To avoid this, regulations concerning health workers should ideally be comprehensively and clearly governed by the Law, considering that provisions concerning health workers are scattered across various forms of legislation that have not fully adhered to societal legal needs.

The closing provision in Article 91 of the Health Workers Law states that since this law comes into effect, all legislation regulating health workers remains valid as long as it does not conflict with the provisions in the Health Workers Law. This means that every regulation, whether in the form of Government Regulation or other lower regulations, will still hold legal power as long as it aligns with the Health Workers Law. Conversely, regulations conflicting with the Health Workers Law no longer possess legal strength. This closing provision reflects an effort to achieve legal certainty, aligning with the principle of *lex superior derogat legi inferiori*, meaning that a higher regulation cannot be contradicted by lower regulations within a regulatory hierarchy. When clashes occur between higher and lower regulations, the higher regulation will prevail. The existence of this hierarchy within the regulations makes applying the *lex superior derogat legi inferiori* principle a mechanism to maintain consistency and legal certainty within the legal system.

The Impact and Efforts regarding the Discontinuity Between Labor Law Regulations and the Principle of Legal Certainty

Lack of clarity in regulations concerning health workers or absence of technical guidelines accompanying the laws can result in uncertainty for health workers as they perform their duties. When existing laws lack detailed implementing regulations, health workers often face confusion regarding what is legally expected of them in their daily practices. For instance, unclear provisions regarding certain service procedures or authority limits can hamper their decision-making, causing health workers to hesitate or be reluctant to act when immediate actions are required in certain situations. Without clear guidance, they lack definitive directives that ensure they operate within legal standards, resulting in on-ground implementations being hindered or exposed to legal risks.

This legal uncertainty also adversely affects health workers because it potentially obstructs their professional rights, especially when dissonant regulations create conflicting implementations that overlap and create uncertainty about their rights and obligations. This overlap complicates their work environment because intersecting or inconsistent regulations introduce ambiguity about legal protections, exposing them to the threat of legal consequences should differing interpretations arise in response to specific medical cases. This situation harms health workers individually but also jeopardizes their ability to provide care, as good-faith actions may still be deemed unlawful due to prevailing regulatory uncertainty.

Furthermore, regulatory vagueness directly impacts the quality of healthcare received by patients. When health workers are confronted with legal risk or face confusion in determining the correct procedures, they may become more cautious or hesitant to act promptly in situations needing swift medical responses. Such concerns could delay the necessary medical actions that are crucial for patient safety, consequently affecting the quality of service rendered. If such uncertainty persists, not only would health workers be adversely impacted, but public trust in the national healthcare system is likely to be eroded. This scenario underscores the importance of legal clarity that not only safeguards health workers but also ensures they can effectively and efficiently execute their duties without the worry of adverse legal repercussions.

Establishing coherent and consistent implementing regulations is crucial to ensure that legal norms formulated in the laws can be effectively applied in practice. When laws concerning health workers are not accompanied by detailed implementing regulations, real-world implementation becomes challenging as there is no clear guidance on the best ways to translate legal norms into tangible practices. Therefore, the government must promptly formulate and issue clear implementing regulations so that health workers, as well as the involved institutions, have concrete guidelines in executing their roles in accordance with the legal provisions. Structured implementing regulations will help minimize the potential for multiple interpretations within the laws, prevent confusion, and ensure that all parties involved in healthcare services share a common understanding of the applicable rules.

Moreover, technical guidelines clarifying procedures and work standards are greatly needed to maintain consistency and accountability in healthcare services. Without detailed technical guidelines, health workers may face the risk of procedural errors or operational mistakes due to a lack of directives regarding the standards to be followed. In emergency situations, clear technical guidelines may serve as a reference for health workers to determine the necessary life-saving steps swiftly and accurately without feeling uncertain regarding the

rules due to insufficient clarity. This is not only essential for protecting health workers from risks of mistakes but also for ensuring that patients receive consistent and quality care. Thus, technical guidelines will provide legal protection and ensure the security that health workers require when fulfilling their duties.

The urgency for establishing detailed implementing regulations and clear technical guidelines is also underscored by increasing public demand for transparent and reliable healthcare services. Consistent regulations will help foster public trust in the national health system, as people can see that health workers operate according to recognized legal standards applied uniformly across healthcare facilities. When health workers are provided with clear guidelines and a supportive legal system, they can work with more tranquility and confidence, which will ultimately enhance overall productivity and efficiency in healthcare services. Therefore, the government must pay special attention to formulating implementing regulations and technical guidelines that not only facilitate implementation in the field but also provide a robust legal foundation for health workers to carry out their professions with full responsibility.

To improve legal certainty in health worker regulations, concrete steps need to be taken, including revising and harmonizing the laws governing health workers to eliminate overlaps or conflicts of norms. This harmonization must cover the alignment of provisions regulating the authority, rights, and responsibilities of health workers across various laws ensuring that each regulation supports and provides clear direction for its implementation in the field. Furthermore, developing detailed technical guidelines and implementing regulations is vital to clarify procedures and standards that health workers must adhere to when executing their duties, thereby minimizing the risk of interpretative conflicts and ensuring consistent service standards. The government must swiftly issue technical regulations that can be implemented clearly and understood by all parties involved in healthcare services. This measure should also be supported by efforts for consultation and collaboration between policymakers and health worker associations to ensure that the formulated guidelines are not only in compliance with legal needs but also relevant and applicable in everyday practices within the health sector. With these measures, it is expected that robust legal certainty will be created, providing adequate legal protection for health workers and ensuring safe and quality services for the community.

4. CONCLUSION

Regulations concerning health workers in Indonesia within the Health Law, the Hospital Law, and the Health Workers Law demonstrate misalignment and inconsistency in the regulations affecting legal certainty. While these three laws provide differing definitions and scopes regarding health workers, none offer a comprehensive and consistent regulation. Variations in terminology, conflicting norms, and lack of completeness in regulation coverage lead to varying interpretations among parties holding authority, potentially resulting in arbitrary actions. Furthermore, overlapping provisions between Government Regulations, Ministerial Regulations, and statutory provisions result in the absence of a solid reference that can serve as the primary guideline. This situation is exacerbated by the fact that some norms in the laws regulating health workers are frequently subject to judicial review, indicating a lack of stability and legal certainty. The principle of legal certainty, ideally serving as the foundation in every article's formulation, has not been fully implemented, resulting in vague legal provisions for health workers, which may lead to conflicts. A holistic and consistent rearrangement is necessary for the law governing health workers, alongside the removal of dissenting norms, to achieve actual legal certainty.

The discontinuity and ambiguity in the regulation of health workers in Indonesia have led to significant legal uncertainty for health workers, negatively impacting their professionalism and the quality of healthcare received by the community. Ambiguity in the law and the absence of supporting technical guidelines result in confusion in task performance, restriction of professional rights, and potential legal risks that may hinder essential medical actions required for patient safety. Additionally, discrepancies between various legislative provisions further exacerbate this situation, creating a challenging work environment and diminishing public trust in the national healthcare system. Therefore, establishing coherent and consistent implementing regulations becomes imperative to ensure that every legal norm is effectively applied, providing clear and detailed guidelines regarding procedures and standards that health workers must follow. Recommended measures, such as revising and harmonizing the laws governing health workers, as well as developing detailed technical guidelines, must be promptly undertaken by the government in collaboration with health worker associations and legal experts. Thus, it is anticipated that a robust legal certainty will emerge that not only protects health workers but also improves the quality and confidence of the community in the national healthcare system, ensuring that health workers can perform their duties effectively and efficiently without the fear of adverse legal consequences.

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