

The Liberalization of the Law on Resources: The Case Study of the Health Sector Liberalization in the Post-Reformation Era

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Abstract

The Reformation Era happened on 1997, which marked the end of the New Order era (1967-1997). The Reformation Era is a transitional situation, which may be deemed as chaos, as the social, political, and economic situations trigger chaos and degradation. It impacts the legislative products on natural resources formed post-reformation, where it contains liberal and capitalist legal substances. Thus, in the legal practice, it gives justification and legitimization. There is a shift in the legal sovereignty in the legal characters in strengthening the private and individual sectors. Due to the chaotic situation, there is the condition of cosmos which is the amendment of Article 33 of the Republic of Indonesia's 1945 Constitution. It inserts paragraphs (4) and (5) as articles of capitalism-liberal legitimization in the constitution. The health sector is the sector which experienced the greatest change into liberalization. The health rights in the constitution are cut through legal liberalization. This research uses a doctrinal paradigm or the juridical-normative method.

Keywords: Liberalization, law, health, reformation

I. INTRODUCTION

The Reformation Era brought a very strong political dynamic. One of them was represented in the change of power management, where there were no less than five heads of the state in Indonesia during the period of 1997-2005. In that period of time also, there was a significant change in the health sector, including the policy of health funds. In the sector of hospitals, the government has changed the statuses of hospitals several times. Starting from the usage of PNBPN (state income from non-tax), Jawatan companies (Perjan) for thirteen State Public Hospitals, it is changed into the choices of either General Company or Company with the issuing of the Constitution No. 19/2003 regarding State-Owned Enterprises, which experienced a disorder with the Constitution No. 22 of 2009 regarding Hospitals. Next, there was the issuing of the Governmental Decree No. 8/2003 regarding regional devices, which was parallel to the State-Owned Enterprises. It influenced the status of Regional Public Hospitals

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into the form of Public Service Agency (BLU) based on the constitution No. 1/2004 regarding State Treasury. The regulatory disorder on the health sector created the regulatory legitimization to liberalize the health management practice in Indonesia.

Aside from the pros and cons which develop and also the ideological and the political backgrounds, it is fact that the liberalization of health services is happening. The example of the health sector liberalization is the decrease of the government's role. The reason behind this is said to be the inability of the government to take the burden and to be solely responsible for the development and management of health services.

Governments of many developing countries are known to depend on the private institutions or organizations to support the provision of health services. This pushes the need for innovative efforts, including the liberalization of services, which is believed as the answer of the problems of inefficiency, and may increase the quality of health services, as stated by Ayuningtyas (1).

II. METHOD

The research method used is the normative-juridical method, with the use of library research approach. This is a qualitative research, which is aimed to find a deeper understanding regarding the new phenomena which happen in the field or in the society, as explained by Soekanto and Mamudji (2).

III. RESULTS AND DISCUSSION

The Policies in the health sector should contain legal essences and substances which are ideological, based on the *rechtsidee founding fathers* which are manifested in the ideology of Pancasila. There are two main channels in the legal development process, which are the legislative method by the legislative power and the testing method by the judicative power. These two methods and processes are the main channels in carrying out the process of legal development, as stated by Yamin (3).

The supporting arguments regarding the liberalization policies in the health sector include: it is an effort to minimize the financial burdens of the government, and increases the efficiency of the enterprises' management, it increases professionalism, it decreases the involvement of the bureaucracy and the government, it supports the intrastate capital market development, it becomes the flag-carrier in going through the global market. Considering that the regulations, finance, and the determination of the service standards are the important areas which become the government's responsibility in the health sector, the government should impose high attention to the transformation and operation of the health sector and the problems which arise, as opined by Newbrander (4).

In Indonesia, the liberalization of the health sector started from foreign loans. One of the dangerous reformation policies which are often encouraged by the international monetary institutions is the promotion of liberalization and privatization of the health sector. It will make it hard for the poor citizens of the receiving country. In its implementation, liberalization is often strengthened with regulations and managerial systems which are needed to make sure that the implications of all policies in the health sector goes well according to Carroll (5).

The international monetary institutions use their highly authoritative policies in the whole world to promote the liberalization efforts in the health sector, even though there are minimal evidences on how the liberalization may provide a solution in fixing problems in the health sector (6). In Indonesia, the national health sector liberalization in its implementation process has gone on aggressively in Indonesia these last few years. This

goes on in line with the rapid growth of private-owned hospitals compared to that of the government these last six years, as said by Cahyandari and Istislam (7).

Through the liberalization efforts, the international monetary institution project has carried out a tight control in saving the budget. For example, Greece. After receiving 110 billion Euro of loan from the IMF, they had to cut their public expenditures and had to undergo a structural reformation (the reformation of the working market, the trade, and the law). The cut budget has caused the decreasing scale of the mosquito fogging program. This caused the reemergence of malaria which spread locally for the first time in forty years. The 26% budget cut has caused the increase of work burden for the medical health workers, the increase of the patient waiting list, the lack of medicine and medical instrument supply. The minimal implementation of the prevention and healing programs for the drug users has caused the increase of HIV infections among the injected-drug users, as stated by Kentikelenis (8).

In the research carried out by Douglas in the health scheme sponsored by World Bank in a Nigerian company to subsidize the health insurance of workers, it is shown that the funds for individual consumers were counted as \$10 beforehand for every year. But, at the end of the fifth year, this payment has increased to \$55 as there was a decrease of subsidy from the World Bank. This scheme was deemed as a failure (9).

The irony of the health liberalization in Indonesia is that since year 2014, the State Budget and Expenditures in the health sector kept on increasing. Ironically, the annual increasing funds allocated for the health sector do not have direct impact in completing the target of Universal Health Care. This is because so far, there is still a disparity in the health services. The rich who lives in the cities have access to high quality health services. Meanwhile, most of the people who live in the villages have very limited access to a good quality health service, as mentioned by the Indonesian Ministry of Health (10).

Apart from that, IMF and WB kept on encouraging the efforts of health service decentralization to increase the responsivity of the local needs. In its practice in some countries, this may actually inhibit the process of adequate health treatments as there are obstacles in the aspect of regional infrastructure, as said by Kentikelenis (6). Yet, substantively, in the philosophical and political perspective, liberalization means “the act of reducing the role of government and expanding that of the private sector” (11). Countries who have not carried out liberalization will receive much intervention from foreigners; thus, it will inhibit its growth and development (11).

Meanwhile, the disagreeing group states that liberalization has a direct relation with the global phenomenon. This is because the economic system which is state-centered is transformed into a free market economic system. This is thought to be a new form of colonialism and liberalism which raid the third world countries' wealth. This is proven to impoverish the people, as opined by Nugraha (12). This is achieved by establishing profit-oriented health services, which is basically like a commodity of business. The image of hospitals which are previously known for its social function has faded. It is changed into its new image which is business-oriented.

The emergence of private-owned hospitals (some of which hold the “international” label) with income targets through health services and the level of room occupancy just like hotels. It influences the state-owned hospitals to do the same. Ironically, many regional governments – both in the province or the state/regency level – start to allocate funds to build profit-oriented hospitals.

The root of all problems which happen in the health sector starts from the healthcare service system which is holistically in the hands of private-owners. In consequence, the commercial aroma reeks thickly in all actions towards patients, meanwhile its social function is way behind. If seen from the outside, hospitals seem to be more

commercialized and it has left its social functions. But in reality, it still has its social functions, as argued by Waitzkin (13). For example, emergency cases are always treated.

This commercial aroma is felt by external parties as the hospitals must struggle in surviving for itself. Hospitals must keep on running; thus, they determine tariffs according to the prices of every unit. This is all because the healthcare service in Indonesia has a liberal tendency. Everything is up to the market. Even, there are tariffs for each service, without certain regulations regarding the market mechanism. Capital owners who open up healthcare services now have the tendency to be profit-oriented. The liberalism perspective means that everything is measured from how much income is gained. This is the reality which generally happens in the healthcare system in Indonesia, even though it is often disagreed upon by the government, as opined by Saraswati and Zulfa (14).

The essence of services is usually manipulated by facilities and prices. Meanwhile, the discrimination towards patients keeps on going. Worse for the patients, there are no supervising agents which correct wrongdoings in services. There are not yet any special legislations which regulate the healthcare services in hospitals, including that regarding control and service procedures to patients. The government should act as a regulatory agent and a referee. It shouldn't leave this condition without having an active role, as argued by Mustajab (15). Reading the various cases which emerge to the surface, Hasbullah Thabrany, as quoted from Mustajab reminds the government to quickly realize that there is a failure of the market in the healthcare service. He added that the application of the market mechanism in hospital services and healthcare services will never bring good to the consumers (15).

All literatures have proven the failure of the market mechanism in healthcare services. It is fact that the more doctors and hospitals there are, the more expensive the healthcare service prices are. Worse, state-owned public hospitals also compete in the market mechanism system, as said by Saraswati and Zulfa (14).

The impacts of the healthcare sector liberalization may be seen from the different service given to poor patients. Research shown that poor patients in both government-owned and private-owned hospitals have a low level of satisfaction. For example, the administrative services are complicated, difficult, and there is not enough information. The staff are not nice. They are not given generic medicine, and the service takes a long time, as argued by Lestari (16). Apart from that, the obligation to pay down payment fees becomes an obstacle for the poor citizens to receive healthcare services in the hospital. Apart from the healthcare service facilities, citizens of the global era also need the facility of healthcare security services.

On one hand, the service quality in hospitals becomes one of the important factors in fulfilling the rights of the society for health, including that for the poor citizens. On the other hand, the service quality in hospitals appear with a unique phenomenon. This is because there are different dimensions and indicators for people who are involved in the services, where the difference lies in the economic factor. To handle these differences, there should be a basic guideline in establishing healthcare services which fulfills the need and interests of the healthcare service customers. The quality of the services should lean towards a perfect healthcare service in fulfilling the needs and wants of every patient, as said by Mustajab (14).

The non-discriminatory healthcare service should result to high satisfaction of the patients in receiving its service. Yet there are still poor patients who experience their rights violated as they have a weak economic level. This still happens without a care from the hospitals, especially if the patients do not express their complaints formally. Even though it is not given attention to, the violation of the patients' rights is principally a problem.

Continuous disorder will destroy the good efforts and will influence the positive image of the hospitals in the eyes of the people. The violation of the patients' rights may happen in hospitals due to lack of knowledge, dominative actions, high burdens in work, and the economic factor, as argued by Lestari (16). The poor people

usually must accept their dissatisfaction towards the bad healthcare service in the hospitals. More and more, the poor people become victims of the liberalist healthcare system which is unfair and discriminative.

Meanwhile for the rich people, such dissatisfaction is enough to make them seek medical treatments from other hospitals. They seek other doctors or go to hospitals overseas which are much more expensive. In consequence, the growth of hospitals with the “international” label keeps on increasing.

The ideological shift in the health sector, from the founding fathers’ dream which is *rechtsidee* into that which is capitalist-liberal is too much. This is a deviation, and it must come back to the essence of the state’s welfare ideology. That is the core value of the Republic of Indonesia’s 1945 Constitution’s ideological article. It should be the guiding light in acting out its substance in every process. The liberalization of health which is happening is a form of the state’s ideological contamination, as Indonesia believes in social welfare (17).

IV. CONCLUSION

The regulative analysis in the perspective of law sees that liberalization of the health sector really happens in the post-reformation era. This analysis results to an interesting invention. The liberalization of the health sector is a foreign agenda which is established through foreign loans to the Indonesian government.

Liberalization is the foreigners’ key in taking over the health sector in Indonesia, through profit-oriented services which only gives benefit to the investors. The policy of the health sector liberalization brings discriminative treatments to the poor people who seek medical services. But actually, discriminative actions and services are against the constitution. The state must eradicate the liberalization of the health sector and turn it into a form of public service.

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