

Research Article

Restrictions on Medical Practice from the Perspective of Dignified Justice

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Abstract

Justice always exists alongside Law. Where the law will overcome injustice in terms of medical practice, it can be seen in the formulation of the 1945 Constitution of the Republic of Indonesia, Article 28 H section 1 every person has the right to live in physical and spiritual prosperity, to live, and have a good and healthy living environment and the right to health services. Injustice in the limitation of medical practice can be described in the existence of a law that is just and dignified. The description of dignified justice in the limitation of medical practice is contained in Law No. 36 of 2014 concerning Health Workers.

Keywords: Limitation of Medical Practice, Dignified Justice Theory.

INTRODUCTION

In the field of health, as with nearly all other professions globally, the activities and organizational structures within a given human society are not free from injustices that threaten their very existence. Law emerges as a necessary mechanism to overcome such injustices and to restore justice. The urgency of legal intervention in addressing injustice—particularly the limitations imposed on healthcare practices in general, and medical practice in particular—is clearly articulated in Article 28H, paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This article affirms that every person has



the right to live in physical and spiritual prosperity, to reside, and to enjoy a good and healthy environment, and to receive healthcare services.

This affirmation is further elaborated in Law No. 36 of 2014 concerning Health Workers. Article 3 of this law specifies the objectives of meeting the public's need for health workers, optimizing the deployment of such workers in accordance with public demand, ensuring protection for the community in receiving healthcare services, maintaining and improving the quality of health services provided by health professionals, and guaranteeing legal certainty for both the public and health workers. Given the significant scarcity of health personnel in remote areas, the law underscores the need for equitable and optimized implementation of healthcare services so that society can reap maximum benefits.

In light of these conditions, this article is written from the perspective of the Dignified Justice Theory (Teori Keadilan Bermartabat), as formulated by Prasetyo (2015). The Dignified Justice Theory seeks to capture, describe, and most importantly explain how the law exists and functions to overcome crime, violations, and injustices that hinder or restrict medical practice. This concept of justice is not merely a variant of previously established theories of justice; rather, it presents a new legal grand theory rooted in Indonesia's philosophical and cultural foundations.

Dignified Justice is positioned as a Grand Theory of Law—a theoretical framework designed to explain and justify the functioning of a legal system. Unlike Western legal theories commonly referenced in Indonesian legal discourse, the Dignified Justice Theory is based on a foundational postulate: that law exists and grows from the spirit of the people, known as the *Volksggeist*. While not rejecting existing legal theories, Dignified Justice offers a model for developing, reconstructing, and interpreting law that is grounded in Indonesia's indigenous philosophical framework, rather than being entirely dependent on foreign legal concepts.

Concepts of justice derived from Plato or Aristotle, for example, reflect the cultural and temporal contexts of ancient Greece. In contrast, Pancasila represents a uniquely Indonesian conception of justice, shaped by the national consciousness and values. Comprising five principles—including Belief in One Supreme God, Just and Civilized Humanity, and Social Justice for All People of Indonesia—Pancasila is regarded as the soul of the Indonesian nation and the primary source of law. Within the framework of Dignified Justice, law is viewed as a system, and thus Pancasila-based law

is inseparable from this foundational consensus and must be aligned with its spirit.

Accordingly, Article 28 of the 1945 Constitution represents a concrete manifestation of Pancasila as the soul of the nation, and is further operationalized through the Law on Health Workers. This embodiment of national spirit must serve as a guiding principle in medical practice. The application of Dignified Justice to restrictions on medical practice can also be observed in Ministry of Health Regulation No. 512 of 2007 concerning medical practice licensing and implementation, as well as Articles 2 and 3 of Law No. 36 of 2014.

From these legal provisions, we can discern the essence of the restrictions on medical practice, which primarily aim at ensuring equitable distribution of healthcare services. Injustice within medical practice is manifested, for instance, in the denial of medical licenses that contradict legal principles or misuse of authority. Such injustices and their regulation are already addressed within existing legislation—specifically Ministry of Health Regulation No. 512 of 2007 and Law No. 36 of 2014.

The objective of this paper is to understand how the idea of restricting medical practice—and efforts to overcome the injustices arising from such restrictions—can be viewed through the lens of Indonesia's *Volksgeist* and made concrete through applicable legal norms. By adopting a legal-regulatory approach, the key legal issue addressed herein is: How is the Dignified Justice Theory manifested in the Law on Health Workers?

METHOD

The writing employs a juridical-normative approach, which is a legal research method that utilizes secondary data as the initial data source, followed by the use of primary data. The data sources in this study include primary data obtained through electronic information sources. The data collected are then processed to extract relevant information that can be further analyzed. The data analysis method used in this research is qualitative data analysis.

RESULT AND DISCUSSION

Law No. 36 of 2014 states that health workers play a vital role in improving the quality of healthcare services provided to the public. The goal is to enable individuals and communities to enhance their awareness and ability to live healthy lives, thus achieving the highest possible standard of health as an investment in the development

of socially and economically productive human resources. This is also aligned with the broader goal of public welfare as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia.

Health is a fundamental human right that must be realized through the provision of comprehensive healthcare services to all citizens. This must be carried out through coordinated, integrated, sustainable, fair, equitable, safe, high-quality, and accessible health development efforts conducted by the central government, regional governments, and the community.

To fulfill the health rights and needs of individuals and communities, as well as to ensure the equitable distribution of healthcare services and provide legal protection and certainty to both healthcare professionals and recipients of healthcare services, regulations concerning healthcare personnel are necessary. Article 1, paragraph 4 of Law No. 36 of 2014 defines “health efforts” as any activity or series of activities that are carried out in an integrated, coordinated, and sustainable manner for the purpose of maintaining and improving public health—through disease prevention, health promotion, treatment, and rehabilitation—by the government and/or the community.

This is further reinforced in Articles 2 and 3, which outline that one of the objectives of the law is to meet public demand for healthcare professionals, particularly in relation to medical practice. From my perspective, if we follow the dictate of the law—that is, the law as the manifestation of the nation’s legal ideals—then legislation represents a concrete embodiment of the legal aspirations and a reflection of the sense of justice embedded within the soul of the nation.

The preamble of the law affirms that every individual has the right to physical and spiritual well-being, housing, a good and healthy environment, and access to healthcare services, all of which must be ensured in a just manner. The form of justice in this context refers to the freedom to practice medicine for the benefit of the nation's and people's welfare.

Justice is a fundamental and primary component of law. To discuss justice is to discuss the law itself. Justice has been a central theme in every school of legal philosophy. In this journal, justice is categorized into two types: general justice (*Justitia generalis* or legal justice), which is the justice that aligns with the law and serves the public interest; and special justice, which is based on equality or proportionality. The former is explicitly applied in the formulation of the Health Workers Law, while the

latter is implicitly present in its provisions.

Legal principles or legal doctrines are general foundational thoughts that underlie specific legal norms and are embedded in the legal system, legislation, and judicial decisions. In the study of law, one key function is to identify these legal principles within positive law. Justice is one such principle and is part of the nation's legal spirit, or *Volksgeist*. Within the perspective of the Dignified Justice Theory, justice serves as the meeting point of the three main purposes of law proposed by Gustav Radbruch: justice, legal certainty, and utility.

Article 4 of Law No. 36/2014 states that the central and regional governments are responsible for regulating the practice of healthcare professionals. However, the article does not mention specific limitations on medical practice. Every licensed medical practitioner who holds a valid registration certificate is permitted to practice in up to three different locations. The law does not explicitly restrict healthcare professionals in terms of their places of practice. When a region is in urgent need of healthcare workers, it is the responsibility of the central and local governments to organize, procure, and deploy such professionals according to public needs.

Article 5 elaborates that in fulfilling its responsibilities, the government has the authority to establish national policies concerning healthcare personnel in alignment with national development priorities. It also covers the procurement and deployment of healthcare personnel. Article 7 further strengthens this by granting district and city governments the authority to distribute and optimize the use of healthcare personnel through equitable deployment, utilization, and development. This includes licensing processes, supervision, capacity-building, and quality assurance of healthcare personnel.

Accordingly, every healthcare professional has equal rights and obligations in practice. In situations where there is only one available practitioner in a region, that practitioner should be granted the freedom to practice—provided it is within the scope permitted by law. For example, if a registration certificate allows for three practice locations, then the healthcare worker should be free to serve in those locations as their professional rights dictate, as stated in Article 5. Therefore, neither the central nor local governments have the authority to arbitrarily limit medical practice, especially when such services are needed, since their mandate is to regulate and manage—not restrict—healthcare practice.

Article 6 emphasizes that provincial governments are responsible for utilizing healthcare workers through equitable deployment, optimization, and development. This article does not regulate any limitation on the number of practice locations. In the event of injustice, the government has the obligation to protect healthcare professionals in accordance with applicable laws and regulations.

In addition, Chapter VII of Law No. 29 of 2004 on the Practice of Medicine, particularly Article 37, paragraph 2, explicitly states that a medical practice license for physicians or dentists—as referred to in paragraph 1—may only be issued for a maximum of three practice locations.

CONCLUSION

Law exists to address injustice in the practice of medicine. From the perspective of the Dignified Justice Theory, the presence of law can be seen through the manifestation of statutory regulations that govern medical practice. One such regulation is the Minister of Health Regulation on Medical Practice and the Health Workers Law (Undang-Undang Tenaga Kesehatan), which serve as concrete expressions of the will or spirit of the nation (*Volksgeist*) in the context of medical practice.

These laws define the various forms of injustice that may occur within the medical profession. Moreover, they provide legal instruments—including various types of sanctions—to respond to crimes, violations, or injustices committed either by individuals, legal entities, or third parties involved in the healthcare sector.

The fundamental aim of the Health Workers Law is to protect all Indonesian citizens, promote public welfare, and support national intellectual advancement. Health is a basic human right, meaning that every person has the same right to access healthcare services, and health professionals should be guaranteed the freedom to practice medicine.

Viewed through the lens of the Dignified Justice Theory, the Health Workers Law aligns with the soul of the nation. This alignment is not limited to the process of law-making, but must also extend—more importantly—to the implementation process. Therefore, the enforcement of the law must be prioritized to ensure that the objectives of the Health Workers Law can be fully realized.

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