



## Reconstruction of Regulations for Fulfilling Patient Rights in Practicing their Religion in Hospitals Based on Justice Values

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**Abstract:** *The background of this research is about the Reconstruction of Regulations for Fulfilling Patients' Rights in Practicing Their Religion in Hospitals Based on Justice Values. that life becomes more meaningful. So the fulfillment of the patient's right to practice his religion in the hospital becomes an important part to spiritually nourish the community. The research method used in this study uses a post-positivism paradigm called social constructivists who try to redefine what is meant by social reality, where the researcher wants to produce a new thought, understanding or idea as well as an effort to reconstruct the regulations of article 32 paragraph 13 and 16 of the Law No.44 of 2009 concerning Hospitals based on the value of justice. The findings of this study are that the regulation of patients' rights in practicing their religion in hospitals is not based on the value of justice, the legal substance is not regulated by sanctions in the provisions of Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 causing a legal structure; law enforcement agencies cannot carry out their functions to enforce the law formally or enforce the law materially, namely justice. The author provides recommendations to reconstruct Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 according to our research to the government and the DPR RI.*

**Key Words:** *Reconstruction, Regulation, Patient Rights, Religion, Justice.*

### 1. INTRODUCTION:

In a legal state that has increased towards a welfare state, it is the obligation of the state with its equipment to create conditions for life. Life for every person, family, and community obtain well-being according to Law No. 36 of 2009 concerning health, which means involving health workers or doctors to actively participate in all health efforts carried out by the government. Government health efforts that involve health workers as authorized state officials are the development of legal aspects in health medical law regulations into legal instruments that specifically determine regular behavior/mandatory orders/prohibition of actions that apply to parties related to health efforts [1].

In realizing optimal health degrees for everyone, which is part of welfare, legal support is needed for providers in the health sector. At first, the effort to provide health was only in the form of disease treatment and health restoration. Then it gradually develops towards unity in a comprehensive, integrated and sustainable health development effort which includes promotive, preventive, curative, and rehabilitative efforts.

Efforts to organize health as referred to above, are influenced by factors of the socio-cultural environment, including the economy, the physical and biological environment which is dynamic and complex. Realizing how widespread this is, the government, through the national health system, seeks to provide comprehensive, integrated, equitable, and acceptable health that is affordable by all levels of society at large, in order to achieve optimal health status [2]. In terms of taking the legal basis is Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 concerning Hospitals as the focus of our research. With the hope to be able to contribute thinking comprehensively in the development of law in Indonesia, especially those related to the issue of patients' rights to practice their religion in hospitals.

#### 1.1 Formulation of the Problem

Based on the background of the problems that have been stated above, several problems can be formulated as follows:



1. Why is the regulation on the fulfillment of patients' rights in practicing their religion in hospitals not based on the value of justice?
2. What are the Weaknesses of the Regulations for the fulfillment of the patient's rights in practicing their religion in the Hospital?
3. How is the Reconstruction of Regulations to fulfill the rights of patients in practicing their religion in Hospitals Based on Justice Values?

## 1.2 Research Purposes

The research objectives to be achieved from this research are:

1. To find out, analyze, and find the implementation of regulations to fulfill the rights of patients in practicing their religion in a Justice Value-Based Hospital.
2. To find out, analyze, and find weaknesses in the regulation of the fulfillment of patients' rights in practicing their religion in the hospital.
3. To find out, find, and formulate the Reconstruction of regulations for the fulfillment of patients' rights in practicing their religion in a Justice Value-Based Hospital.

## 2. RESEARCH METHODOLOGY

The research method used in "This study uses a post-positivism paradigm called social constructivists who try to redefine what is meant by social reality, where the researcher wants to produce new thought, understanding or idea as well as an effort to reconstruct the regulations of article 32 paragraph 13 and 16 of the Law No.44 of 2009 concerning Hospitals based on the value of justice, with a sociological juridical approach as the main approach with the specification of this research, is Sociological legal research, is descriptive research that describes and explains which aims to describe systematically, factually, accurately and completely about the legal situation that applies in the hospital to the rights of patients in practicing their religion. And based on the type of research used in this study is sociological juridical, so to obtain objective data, the type of data needed is primary data and is supported by secondary data."

## 3. RESULT AND DISCUSSION

Religious teachings require adherents to carry out their teachings regularly. The form and implementation of religious worship at least will be able to influence in instilling nobility of character which at its peak will lead to a sense of success as a faithful servant of God. Worship will at least give a sense that life becomes more meaningful. Humans as creatures who have physical and spiritual unity inseparable require treatment that can satisfy both.

In terms of fulfilling the patient's right to practice his religion in the hospital, it is an important part to nourish the community spiritually. The findings of the research and discussion of research on "*Reconstruction of Regulations for Fulfilling Patient Rights in Practicing Their Religion in Hospitals Based on Justice Values*", are as follows:

### 3.1 Regulation of Patients' Rights in Practicing Their Religion in Hospitals is Not Based on Justice Values.

Regulations are rules made "by governments or other authorities to control the way things are done or the way people behave. While the rights of patients in this study, we take from the legal basis is Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 concerning Hospitals as the focus of our research". If we look at the legal effectiveness theory approach of Lawrence M. Friedmann, each legal system consists of 3 (three) sub-systems, namely the legal substance, legal structure, and legal culture. Based on the legal system theory of Lawrence M. Friedmann, it shows that there are weaknesses in the construction of regulations in Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 concerning Hospitals. The description is as follows:

#### 1) The Legal Substance

Regarding Legal Substance, Lawrence M. Friedman explains as follows:

*"Another aspect of the legal system is its substance. By this it meant the actual rules, norms, and behavioral patterns of people inside the system, the stress here is on living law, not just rules in law books"*.

Substantially, "the implementation of the patient's right to practice his religion is regulated in Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 concerning Hospitals, as follows:"

- a) **Paragraph 13 reads:** *"to carry out worship according to his religion or belief as long as it does not disturb other patients"*.
- b) **Paragraph 16 reads:** *"refuses spiritual guidance services that are not in accordance with the religion and beliefs they profess"*.



In Law No. 44 of 2009 concerning Hospitals, “there are no sanctions for hospitals that do not carry out the provisions of Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 concerning Hospitals, do not facilitate so that patients in hospitals can exercise their right to worship and receive spiritual guidance according to their religion and beliefs.” *The implementation of laws “and regulations will not be effective if it is not accompanied by law enforcement. Law enforcement against a statutory regulation can take various forms, one of which is stated in the provisions of sanctions, which can be in the form of criminal sanctions, civil sanctions, or administrative sanctions”*[3].

## 2) The Legal Structure

The structural aspect by Friedman is formulated as follows:

*“The structure of a legal system consists of elements of this kind: the number and size of courts; their jurisdiction (that is, what kind of cases they hear, and how and why), and modes of appeal from one court to another. The structure also means how the legislature is organized, how many members sit on the Federal Trade Commission, what a president can (legally) do or not do, what procedures the police department follows, and so on.*

The problem regarding the rights of patients in practicing their religion in hospitals from the aspect of the legal structure sub-system is in Law No. 44 of 2009 concerning Hospitals, there are no sanctions for hospitals that do not carry out the provisions of Article 32 paragraphs 13 and 16 of the Law. Law No. 44 of 2009 concerning Hospitals. This shows that the regulation of the fulfillment of patients' rights in practicing their religion in hospitals is not based on justice values. materially that is fair.

## 3) The Legal Culture

As for legal culture, “Friedman defines it as the attitude of society towards the law and the legal system, about beliefs, values, ideas, and expectations of society about the law. In his writings Friedman formulated it as follows: *”By this, we mean people’s attitudes toward law and the legal system, their beliefs, values, ideas, and expectations. In other words, it is that part of the general culture which concerns the legal system”*.

As mentioned in the previous section, “in the aspect of the legal culture sub-system, the problem regarding the patient's right to practice his religion in the hospital from the aspect of the legal culture sub-system is in Law No. 44 of 2009 concerning Hospitals, no sanctions are regulated. for hospitals that do not carry out the provisions of Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 concerning Hospitals, so that there is no legal culture to provide opportunities or facilitate so that hospital patients can worship and be given spiritual guidance services. So the attitude of the community towards the law and the legal system, regarding the beliefs, values, ideas, and expectations of the community regarding the patient's right to practice their religion has not yet been formed.”

## 3.2 Weaknesses of Regulation on Fulfilling Patients' Rights in Practicing Their Religion in Hospitals

Humans are quite unique creatures, besides being equipped with creativity, taste, and intention, humans also have norms, ideals, and conscience as their human characteristics. This relationship with the Creator is the part he nature that is human nature as a created being. In the study of transpersonal psychology, this dimension is included in the study of Extra Sensory Perception (ESP), which is known as the noble potential of humans.

If analyzed with the theoretical approach “of the work of William Chambliss and Robert B. Seidman, which in their book entitled “Law Order and Power”, gives an understanding that this theory sees the balance of legal functions. *“According to Seidman, there are 3 (three) factors that form the basis for the operation of law in society, namely”*:[4]

- (1) Law-Making Process;
- (2) Law Implementing Process;
- (3) and Role Occupant

The first factor is the Law-Making Process; which is the institution authorized to legitimize the making of legislation. The regulatory agency related to this research is the House of Representatives of the Republic of Indonesia as a legislative body. This means that Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 concerning Hospitals is a legal product made by the DPR in order to establish legal rules to provide protection and fulfillment of patient rights in Indonesian health facility services. Weaknesses of Law No. 44 of 2009 concerning Hospitals



which regulates the rights of patients to practice their religious beliefs are not accompanied by the provision of sanctions to hospitals if they do not carry out or facilitate the rights of patients in carrying out their religious beliefs in hospitals.

The second factor is the Law Implementing Process; which is an implementing agency that strictly implements the orders contained in the law without discrimination. Hospital management is the implementing agency for regulations. So the obstacle to the implementation of the patient's right to practice their religious beliefs is due to the low legal awareness of the hospital management, that there are still many hospitals that have not provided opportunities for the 6 official religions in Indonesia to worship and receive spiritual guidance services, indicating that the legal knowledge of health workers is still low.

The third factor is the Role Occupant; "namely people who are expected to be able to obey the law. The function of the role holder, in this case, is as feedback to the regulatory agencies and the regulations implementing agencies. *"In connection with this study, the role holder is a patient in the hospital who acts as a response to the rules made. Patients are expected to understand these rules, while the Hospital facilitates the rights of patients as regulated in Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 concerning Hospitals"*.

From the results of research on legal knowledge, legal understanding, and low legal attitudes, the pattern of legal behavior will also be low, so the patient as a Role Occupant from the provisions of Article 32 paragraphs 13 and 16 of Law no.44 of 2009 concerning health is low, the demands of the parties Hospitals to facilitate religious needs and get spiritual guidance for 6 religions recognized in Indonesia to have low patient participation in hospitals.

### 3.3 Reconstruction of Regulations to Fulfill Patients' Rights in Practicing Their Religion in Hospitals Based on Justice Values.

The word "*reconstruction*" in English is reconstruction, according to the Black Law Dictionary defined as follows:

*"The act or process of rebuilding, re-creating, or reorganizing something, or A rebuilding of a broken, worn-out, or otherwise inoperative patented article in such a way that a new article is created, thus resulting in an infringement"*[5].

While justice is one of the goals of the law, "apart from legal certainty itself. The theory of justice is the idea that all people want to be treated fairly and thus compare their own contributions and rewards with those of their co-workers, to determine whether they have been treated fairly, the point is to achieve the will to be treated fairly [6].

The characteristics of Pancasila justice are part of the form of justice in the form of principles in forming law. Justice based on Pancasila prioritizes human rights and equal protection before the law in its realization as the principles of law formation based on Pancasila. the characteristics of justice based on Pancasila in the form of protection of human rights and equality before the law, of course, cannot be separated from the principles of the five precepts of Pancasila and equal protection before the law [7].

In Islam itself, justice is a serious concern to be realized. Both in the social, legal and economic realms, justice is the main foundation that is a factor in the piety of a Muslim. "The Qur'an uses the terms (*al-`Adl*) and (*al-Qisht*) for the notion of justice. Sayyid Qutb interprets justice as absolute which means that justice is absolute. This means that it includes comprehensive justice among all human beings, not justice between fellow Muslims and towards the people of the book only. Justice is the right of every human being, believer or disbeliever, friend or foe, white or black, Arab or non-Arab. Fair is also defined as:

*"Generally speaking, justice in Islam means placing something in its rightful place. In this regard, actually, there are at least three very important aspects of justice. First, by placing someone in a post or function appropriate to his capabilities. Second, to meet our sentence or make a decision appropriate to a situation or the person about to receive it. The last one is, to place wealth or property to those who rightly deserve them"*[8].

In general, "justice in Islam means putting something in its proper place. And from our research that there are still many hospitals that have not provided the opportunity for the 6 official religions in Indonesia to worship and receive spiritual guidance services for patients [9][10]. So based on the discussion above, "it was found that there was a gap between *das sein* (*what should be*) and *das sollen* (*what happened*) on the enactment of Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 concerning Hospitals. the rights of patients to practice their religion in a justice-based hospital are as follows, reconstruction of Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 concerning Hospitals, by reconstructing Article 62 by adding 2 paragraphs (paragraphs 2 and 3), namely:"

- (2) *Any person who intentionally operates a Hospital that does not carry out as referred to in Article 32 paragraph (13) shall be sentenced to a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp. 5,000,000,000.00- (five billion rupiah).*



- (3) Any person who intentionally operates a hospital that does not carry out as referred to in Article 32 paragraph (16) shall be sentenced to a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp. 5,000,000,000.00- (five billion rupiah).

#### 4. CONCLUSION:

The problem regarding patients' rights "to practice their religion in hospitals is in Law No. 44 of 2009 concerning Hospitals, there are no sanctions for hospitals that do not carry out the provisions of Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 concerning hospitals. "This shows that the regulation of the fulfillment of patients' rights in practicing their religion in hospitals is not based on the value of justice. So there is no legal culture to provide opportunities or facilitate so that hospital patients can worship and be given spiritual guidance services. So the attitude of the community towards the law and the legal system, regarding the beliefs, values, ideas, and expectations of the community about the patient's right to practice their religion has not yet been formed."

From the results of research on legal knowledge, legal understanding, and low legal attitudes, the pattern of legal behavior will also be low, so the patient as a Role Occupant from the provisions of Article 32 paragraphs 13 and 16 of Law no.44 of 2009 concerning health is low, the demands of the parties Hospitals to facilitate religious needs and get spiritual guidance for 6 religions recognized in Indonesia to have low patient participation in hospitals. And a process of reconstructing Article 32 paragraphs 13 and 16 of Law No. 44 of 2009 concerning Hospitals is needed, by reconstructing Article 62 by adding 2 paragraphs, namely paragraphs 2 and 3.

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