



Legal Analysis of the Constitutional Court's Decision on the Revocation of Article 11 (Paragraph) 1, 2 of Law No. 36 of 2014 concerning Health Workers: Literature Study, Constitutional Court Decision No. 82/PUU-XIII/2015

Karel Batmanlusi
Cenderawasih University Papua

Corresponding Author: Batmanlusi karelbatmanlusi64@gmail.com

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ABSTRACT

This study aims to analyze and find out the basis for the Constitutional Court judge's decision No.82/PUU-XIII/2015, which granted the applicant's request to revoke Article 11 paragraphs 1 and 2 of Law No. 36 of 2014 concerning Health Workers, that medical personnel, namely doctors, dentists, specialists, special dentists are not health workers, whereas the explanation of paragraph 2: health workers are people who devote themselves in the field of health and have knowledge, skills through education in the health sector which for certain types requires the authority to carry out health efforts. Testing of this law has ended in the repeal of that article. This research is a normative juridical research with descriptive analysis. Primary legal data sources are the judge's decision No.82/PUU XIII/2015, secondary data are related laws, it is hoped that it will not cause confusion over the status and position of medical personnel. Therefore, the judge must be able to reflect on the meaning of each article which is the reason for the applicant to revoke it, and it is necessary to conduct socialization so that there is a new understanding of medical personnel not being classified as health workers and a strong rationale. The output of the research, is a new understanding of the community about medical personnel not Health workers.

INTRODUCTION

Every citizen has the same right to independence and is protected by the constitution, the words of the preamble to the 1945 Constitution are that in fact independence is the right of all nations and therefore, colonialism over the world must be abolished, because it is not in accordance with humanity and justice (National Information Institute of the Republic of Indonesia, 2000) then holistically the rights of fellow citizens must receive protection, including obtaining health services as stated in article 28H that every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to obtain health services, and article 28I, Every person has the right to be free from discriminatory treatment on any basis and has the right to receive protection against discriminatory treatment (Secretariat General of the People's Consultative Assembly of the Republic of Indonesia, 2020), so that it has the meaning of an obligation (order) including medical personnel to intervene in health services according to his profession.

Health workers play an important role in improving the quality of services so that they can increase the ability to live a healthy life with awareness, will, and achieve the highest possible level of health. Article 1 paragraph 1 of Law Number 36 of 2014 confirms that Health Workers are every person who dedicates themselves to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires authority to carry out health efforts, and paragraph 4, health efforts are a series of activities carried out in an integrated, integrated and sustainable manner to maintain and improve the level of public health in the form of disease prevention, health improvement (promotive-preventive), disease treatment and health restoration (curative-rehabilitative) by the government and/or the community so that the highest level of health will be achieved. (Law No. 36, 2014), so that it has the meaning of an order for all health workers, including medical personnel, to intervene in health services according to their respective professions. These service efforts are intended to improve public health maintenance based on non-discriminatory and participatory principles, so that holistically the rights of fellow citizens are protected, including to obtain health services. Therefore, every health effort must be based on health insight and the responsibility of all parties, both the Government and the community, in paying attention to public health.

The basis of the Mahkamah Konstitusi's decision (Number 82/PUU-XIII/2015.) which revoked article 11, paragraph 1 and paragraph 2 of the Health Workers Law number 36 of 2014 was the basic reason of the applicants who emphasized constitutional rights, recognition, guarantees, protection and fair legal certainty, which are considered violated/harmed by the application of this law by the applicants are 1. The Indonesian Doctors Association, 2. The Indonesian Dentists Association. This article is considered to be an article that regulates constitutional authority protected by the 1945 Constitution and is considered to be overlapping, inconsistent and ignores the medical practice law. In Law No. 12 of 2011 concerning the Formation of Legislative Regulations, if

you look at article 7 Types and hierarchy of statutory regulations, the Health Personnel Law and the Medical Practice Law both have the same hierarchy/level that neither of them is lower (Inferior) or higher (superior). Bunnyi Article 11 paragraph (1) letter a, Law no. 36 of 2014, Health Workers are grouped into: medical personnel, b. clinical psychology staff; c. nursing staff; d. midwifery staff; e. pharmaceutical staff; f. public health workers; g. environmental health workers; h. nutritional staff; i. physical therapy personnel; j. medical technicians; k. biomedical engineering personnel; l. traditional health workers; m. other health personnel, and it is clarified in paragraph (2), that the types of health personnel included in the medical personnel group consist of doctors, dentists, specialist doctors, specialist dentists, so that it explicitly and clearly implies that medical personnel are professional personnel, The same position as nursing professional staff, midwife professional staff, pharmacy staff, each of which has special competencies (professions) but all of them are included in the health workforce.

Article 1 numbers 6 and 7 Health Law no. 17 of 2023, has become confused in the definition of medical personnel and health workers, this law should define nurses, midwives which are professions like medical personnel (doctors and dentists) rather than defined health workers. Explanation of article 1 number 6, Medical personnel are any person who dedicates themselves to the health sector and has a professional attitude, knowledge and skills through medical or dental professional education who requires authority to carry out health efforts. Explanation of number 7, A Health Worker is any person who dedicates themselves to the field of Health and has a professional attitude, knowledge and skills through higher education, which for certain types requires authority to carry out Health Efforts.

Explanation number 6 only includes professional education, even though for professional education a medical worker (doctor) must take formal, tiered education which is then continued with professional professional education. In number 7 of this law, it is explained that health workers only have higher (formal) education without professional education. The reality is that nurses, midwives and other health workers also have professional education as a requirement for practicing health services as regulated in statutory regulations. If it is interpreted that medical personnel are Every person who dedicates themselves to the health sector and has a professional attitude, then medical personnel are also health personnel who dedicate themselves to the health sector, the same as other health personnel, namely nurses, midwives, etc. Articles in the health personnel law refer to article 1 points 2 and 6, Health Law, which explains that human resources and health personnel for certain types require authority to carry out these health efforts. Therefore, a review of the law by a judge must truly provide protection for every citizen, without discrimination because a judge's decision as conveyed by Maruarar Siahaan, who grants a request for review, will state one article, paragraph or part of the law. the law, and even the law as a whole is contrary to the 1945 Constitution, which then as a consequence the law, article, paragraph or part of the law being reviewed no longer has binding legal force (Siahaan, 2009). Constitutional

Court judge's decision No. 82/PUU-XIII/2015, which granted the applicant's petition by revoking Article 11 paragraph 1 of Law Number 36 of 2014, makes the profession of Medical Personnel superior and considers other professional personnel inferior, as argued by the applicant. that doctors and dentists have the authority to act independently and give orders (Standing Orders) to health workers (superbody) within the scope of health.

With the description of the problems above, this research is directed at answering several problems, namely; What is the basis for the legal considerations in the Constitutional Court Judge's Decision No. 82/PUU-XIII/2015, which revokes article 11 paragraphs 1 and 2. Law No. 36 of 2014 concerning Health Workers? What is the basis for the request for formal and material review of Law No. 36 of 2014 Health Workers regarding the 1945 Constitution of the Republic of Indonesia?, and What is the legal objective of the Constitutional Court Judge's Decision No. 82/PUU-XIII/2015 to be achieved?

THEORETICAL REVIEW

Legal Definition

Lexically, law is regulations or customs that are officially considered binding and confirmed by the authorities or government. Law also includes rules in the form of laws and related regulations, rules in society, and decisions made by law enforcers (Online Legal Team, 2023). Referring to Smadmin (2019) Understanding Law is a regulatory system in which there are norms and sanctions aimed at controlling human behavior, maintaining order and justice, and preventing chaos.

Legislation

Law/Legislation is Legislation which was formed by House of Representatives with mutual consent President Laws have a position as rules of the game for the people to consolidate their position political And law, to organize life together in order to realize goals in the form of a state. Laws can also be said to be a collection of principles that regulate government power, people's rights, and the relationship between the two (Ministry of Religion, South Tangerang City).

Health workers

Health workers as regulated in Law Number 36 of 2009 concerning Health, are every person who dedicates themselves to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires authority to carry out health efforts. According to Oenthera (2014) Health workers can also be categorized as workers. In other words, health workers also need to receive legal protection in accordance with general labor regulations and their working relationship with hospitals as employers. Furthermore, in Government Regulation of the Republic of Indonesia Number 32 of 1996 Health Workers are every person who dedicates themselves to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires authority to carry out health efforts.

METHODOLOGY

When conducting research, it is of course important to use the method (Ilham et al., 2022). Therefore, this research is descriptive analysis. The type of research used is normative law (normative juridical). According to Soekarto (1984), normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in statutory regulations. This research was carried out by means of literature study. Referring to Hamzah in Ohoiwutun and Ilham, library research is part of a type of qualitative research because this type of research has strong post-positivist philosophical roots. Therefore, the characteristics of qualitative research must be transformed into the context of library research by moving the field set to the library room, including changing interviews and observations to text and discourse analysis (Tebay et al., 2023). The data collection tool used is document study to obtain secondary data, by reading, studying, researching, identifying and analyzing primary, secondary and tertiary data related to this research.

The basis for requesting formal and material review of Law No. 36 of 2014 concerning Health Workers against the 1945 Constitution of the Republic of Indonesia

The basis or principal of the applicant's application for formal and material testing of the law on health workers is Article 11 paragraph (1) letter a, which reads: Health workers are grouped into: medical personnel, b. clinical psychology staff; c. nursing staff; d. midwifery staff; ... etc., paragraph (2), the types of health personnel included in the medical personnel group consist of doctors, dentists, specialist doctors, specialist dentists.

According to the applicants, Article 11 (paragraph) 1 and (paragraph) 2, which groups health workers into medical personnel, is contrary to Article 28.D and Article 28H of the 1945 Constitution. The Petitioners stated that this law was not mandated by the health law to regulate medical personnel, therefore the Petitioners considered that this regulation was a form of arbitrary power of the legislators because it was considered to exceed the delegated mandate (Over Mandatory).

The petitioners stated that the regulation of medical personnel is considered a form of arbitrariness in the power of legislators because it exceeds the mandate of delegation (overmandatory) and has disrupted and damaged the medical practice system, damaged the legal validity of medical practice, and is a legal norm that has no validity. (validity), and is an action outside the scope of authority (*ultra vires uler*) and does not have a delegation mandate from Health Law no. 36 of 2014.

Apart from that, the petitioners argue that the legislators made a mistake in the logical hierarchy and structure of legal policy because they could not differentiate between professional workers (doctors and dentists) and vocational workers because vocational workers are not professional workers. If the professional responsibilities of medical personnel and health personnel are not differentiated and medical personnel are still not excluded in the health personnel law, then it is certain that there will be chaos in the medical practice legal system, thus creating legal uncertainty in medical practice.

The provisions of article 11 (paragraph) 1, are considered by the applicants as provisions that have damaged and caused injury to the legal system developed in the Health and Medical Practice Law, because in a law, the formulation of a legal provision is an interpretation of a clause containing clear meaning and useful for those who carry it out so that it does not cause chaos in the legal system. The regulation of medical personnel in the health personnel law ensnares medical personnel in excessive punishment which ignores the principles of legality and certainty of criminal law. This was stated by Jeremy Bentham who emphasized: "A law can only be recognized as law if it provides the greatest benefit to as many people as possible. (Ali, 2007).

The petitioners' application to revoke article 11 paragraph 1 paragraph 2 of the Health Workers Law has shown that the petitioners do not understand their duties and functions. This law clearly limits and protects every profession described in paragraph 2. This is confirmed in article 23 of health law number 36 of 2009 that the authority to provide health services is carried out in accordance with the field of expertise possessed and minimum qualifications. Therefore there is no confusion in these meanings.

The applicants have protected themselves and given special privileges to the professions of doctors and dentists, because they have the competence to carry out independent actions on the human body, while other health workers carry out delegated functions as stated in their written petition, said the doctor. and dentists have the authority to act independently and give orders (Standing Orders) to health workers (superbody) within the scope of health. and is considered contrary to the 1945 Constitution.

The statement above is contradictory and shows the arrogance of medical personnel (doctors, specialist doctors, dentists, specialist dentists). Medical personnel and other professional personnel (nurses, midwives, pharmacists, etc.) are partners who collaborate with each other, not inferior medical personnel. Delegation and orders are not the doctor's authority as per article 40 of the Medical Practice Law no. 29 of 2004, Due to different competencies and professions.

The above statement clearly contradicts the applicant's statement that the exclusion of medical doctors and dentists from the regulations of Law no. 36 of 2014 concerning health workers is legally constitutional and in accordance with professional responsibility. The exception of medical personnel is not a discriminatory distinction but a difference in competence authority and professional responsibility, namely for carrying out health efforts.

A mistake which is the applicant's excuse in point 20, is stated in article 21 paragraph 3 of the Health Law. explains that health workers are outside of medical staff, but if you look closely at the sound of the article, the provisions regarding health workers are regulated by law and are not outside of medical staff. Health workers according to this law are health workers who have qualifications who are authorized to provide health services and do so according to their field of expertise, (paragraph 2) so that there is no conflict, therefore the applicant's petition is unreasonable to file this lawsuit.

Article 1 point 6, Law on health workers, explains that a health worker is every person who dedicates themselves to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires authority to carry out health efforts, and Article 23 must comply with the provisions of the code of ethics, professional standards, rights of health service users, service standards and standard operational procedures. Therefore, a doctor's authority to give orders (mandate) to other professional staff is contrary to the medical law itself, article 40, a doctor or dentist who is unable to carry out medical practice must make a notification or appoint a replacement doctor or dentist who has a practice license (Law Number 29 of 2004, concerning Medicine).

He further said that the constitution has a position as a guide and gives direction to the legislative system or national legal system, so that ideally all statutory regulations must faithfully explain the provisions of the constitution, if not it means reducing the constitution. The 1945 Constitution, which is the touchstone of Indonesia's legal system, especially laws, should not merely be in accordance with or contradict the sound of the text of the articles of the constitution, but must also be captured in its meaning which is the moral message of the constitution or "The spirit of the constitution" (Fadjar, 2011).

Basic Legal Considerations in the Constitutional Court Judge's Decision No. 82/PUU-XIII/2015, which revokes Article 11 Paragraph 1 and 2. Law no. 36 of 2014 concerning Health Workers

A judge at the Constitutional Court, in adjudicating a lawsuit and before making a decision, needs to understand and consider the previous legal bases relating to the issue of the applicant's petition. Therefore, for the constitutional judge who is adjudicating the applicant's lawsuit regarding health workers who are grouped into medical personnel, it is the Constitutional Court Law article 51 paragraph 1, that those who can submit a request for judicial review of the 1945 Constitution are those who consider that their constitutional rights and/or authority granted by the 1945 Constitution are impaired by the enactment of a law and the loss of their constitutional and/or rights must fulfill five conditions, namely, the existence of constitutional rights granted by the 1945 Constitution and which the applicants consider disadvantaged by the enactment of the law requested for review. The loss must be of a specific (special) and actual nature which according to reasonable reasoning and can be ascertained will occur and give rise to a causal relationship between the loss and the enactment of the law whose review is requested. There is a possibility that if the request is granted, the constitutional damage as proposed will not be or no longer happens.

Based on the request for the revocation of article 11 paragraph 1 and paragraph 2, because the regulation of medical personnel originates from arbitrariness of power that acts in excess of mandate (over mandatory) thereby violating article 28 D paragraph 1 of the 1945 Constitution. b, making regulations for medical personnel whose substance does not have validity/validity and therefore violates article 28D paragraph 1 of the 1945 Constitution, c. regulating Medical Personnel which is a paradigmatic error that

damages the legal system of medical practice and even the national health system, thereby violating Article 28 D paragraph 1 and Article D paragraph 2 of the 1945 Constitution, d. the regulation of medical personnel is an error in the application of the logical hierarchy and legal policy structure, thereby violating article 28D paragraphs 1 and 2 of the 1945 Constitution, e. regulation of medical personnel is a misconception and misguided perception of medical personnel as a profession, thus violating article 28 H paragraph 1 of the 1945 Constitution.

As a judge, the Constitutional Court also takes the government into consideration, as in the explanation of point 176 of law no. 12 of 2011, the explanation functions as an official interpretation for the formation of legislative regulations on certain norms in the body, therefore the explanation only contains descriptions of words, phrases, sentences or equivalent words,/foreign terms in the norm which can be accompanied by examples. Explanation as a means of clarifying norms in the body must not result in non-conformity of the norms in question. Furthermore, point 177 of Law No. 12 of 2011 states that explanations cannot be used as a legal basis for making further regulations and cannot include formulations containing norms. Therefore, based on these provisions, according to the government, the applicant's opinion cannot be justified if it is stated that the law on health workers is overly mandatory, because the explanation is not a norm so it cannot form a new norm in its provisions.

If you look at the explanation above, what is conveyed by the defendant, in this case the government, is that the applicant's assumption and petition only register assumptions without any evidence, and their constitutional rights are not obstructed or reduced and the applicant's petition is not acceptable (*niet onvankelijk verklard*).

Article 51 of the Health Law states that health efforts are carried out to realize the highest level of health for individuals and society. Individual health services are aimed at curing disease and restoring individual health. Implementation is clear. Medical personnel are health workers who carry out treatment individually and individually to improve health status, which means the practice of doctors for healing that leads to health choices. It has been implicit and explicit that doctors are health workers. This must be understood so that the sense of justice for other professional personnel in the health sector is not inferior by the arrogance of the applicant's narrow understanding.

Legal Objectives of the Constitutional Court Judge's Decision No.82/PUU-XIII/2015

The legal objective of the Constitutional Court Judges' Decisions is to achieve and realize constitutional justice, namely justice that is in line with the values and principles of the Constitution and the 1945 Constitution through a transparent and fair judicial process, as well as to guarantee that there will be no more legal products that come out of the corridors of the constitution so that the rights of the applicants are safeguarded and the constitutionality of the constitution itself is protected. Because according to Johansyah, The Constitutional Court has the authority to adjudicate at the first and final level whose decisions are final and binding. The decision of the Constitutional Court,

which is final and binding, contains 4 (four) legal meanings, namely: First, to create legal certainty as soon as possible for the parties to the dispute. Second, the existence of the Constitutional Court as a constitutional court. Third, it is meaningful as a form of social control carried out by the Constitutional Court. Fourth, as the sole guardian and interpreter of the constitution (Johansyah, 2021) If a law or one part of it is declared to be in conflict with the law above it, then the legal product is revoked by the Constitutional Court because the law must refer to and must not conflict with higher laws. Through this judicial review authority, the Constitutional Court carries out its function of ensuring that there are no longer legal provisions that conflict with or go outside the corridors of law. The Constitutional Court's decision, which is final and binding, is a concrete form of the essence of the Constitutional Court's decisions in controlling the social conditions of Indonesian society and as an instrument of social control which is realized in the form of legal norms which have the nature of approving and/or canceling a statutory provision. because, the legal product in the form of a law is essentially the end result of political bargaining from various mass organizations, especially socio-political forces in parliament with their respective interests (Amin, 2012).

A valid law is a constitutional law because the law has been made based on and in a manner determined by the constitution. Meanwhile, laws that are not in accordance with the constitution are institutional laws and are invalid because there is a conflict. Thus, the aim of the constitutional court judge's decision in this case is:for justachieve and realize constitutional justice, for the petitioners but not for the recipients of health services because the aim of health services through medical treatment is not health services that lead to healing health. This will have an impact and create doubts for recipients of health services both in hospitals, health centers and other health service clinics. Therefore, the judge's decision must fulfill legal certainty and a sense of justice for every Indonesian citizen.

CONCLUSIONS AND RECOMMENDATIONS

The petitioners have the legal standing to submit the petition because the constitutional rights and/or authority are granted by the 1945 Constitution, based on the Constitutional Court law. The constitutional rights and/or authority of the petitioners were impaired by the health workers law, article 11 (paragraphs 1 and 2), which is the basis of the petitioners' lawsuit. If you look closely at the text of the article above, there are no constitutional rights of the petitioners that are being harmed because it is clear in the Law on Health Personnel Article 1 paragraph 2. That the petitioners show arrogance of power as medical personnel who are superior to other professional personnel because they have the authority to order other health personnel. Article 11 (paragraphs 1 and 2) of the law on health workers is in conflict with the 1945 Constitution, because it does not have the delegation mandate given by the Law on Health Number 36 of 2009, so that the regulation of medical workers is a form of arbitrariness. forming a law that exceeds the mandate of the delegation. If you look at article 21 point 3 of the health law, it says that provisions regarding

health workers are regulated by law. However, article 22 paragraph 3 states that the provisions regarding health workers are regulated by law, and in accordance with the law, medical workers are regulated in the Medical Practice Law No. 29 of 2004.

Based on article 11 paragraphs 1 and 2 which are the reasons for the petitioners' lawsuit, the judge granted the petitioners' petition with Constitutional Court Decision No.82/PUU-XIII/2015. By observing the constitutional judge's decision, there is a legal flaw because from understanding the article which is the basis of the petitioner's lawsuit, there is no material or formal loss to the constitutional rights of the petitioner and it will even have a negative impact on the public's understanding of the meaning of medical personnel themselves, what medical personnel services are. whether carried out by a doctor aims to restore the patient's health or not, because the practitioners claim that they are not health workers.

As a recommendation, For Law Makers: To form a statutory regulation, it is necessary to pay attention to the hierarchy of statutory regulations so as not to cause misunderstanding and confusion for those who will implement it. an arbitrariness of the law-making power that exceeds its authority if it is not given a mandate by the law above it (over mandatory). For the judge, it is necessary to pay close attention to the material of the lawsuit filed by the applicants, so that deciding on a case can provide a sense of justice for everyone and not just the applicants, especially in this case the doctors, both general practitioners, specialist doctors, dentists. and specialist dentists can carry out their professional duties on a legal basis that is appropriate to their profession. For applicants, in submitting a lawsuit, it is necessary to prioritize ethical values and legal principles in accordance with the values that exist in society and based on the values of Pancasila and the 1945 Constitution.

FURTHER STUDY

This research uses a library method so that the data obtained is dynamic, thus following for future development.

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