

HUMAN RIGHTS CONSTITUTION ON HEALTH PROTECTION OF INDONESIAN CITIZENS

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Abstract - This study examines the protection of health rights in Indonesia from the perspective of human rights and the Indonesian constitution. The study aims to analyze relevant regulations and articles on health rights protection and propose an ideal pattern in health protection for citizens within the framework of human rights and the Indonesian constitution. The methodology used in this study is a descriptive-analytic approach with a focus on normative legal research. The results show that the right to health is a fundamental human right and must be guaranteed by the state following the constitution and human rights law. The study also identifies various aspects of health rights protection, including the right to quality and affordable health services, health insurance, and eliminating discrimination in health services. Moreover, the study proposes an ideal pattern for health protection for different vulnerable groups, including women, children, people with disabilities, elderly people, and people with HIV/AIDS. The proposed ideal pattern includes policies and regulations to support reducing maternal mortality, strengthening child health programs, realizing disability-friendly health facilities, providing long-term care services for elderly people, and eliminating stigmatization and discrimination against PLHIV. Overall, this study highlights the importance of fulfilling the health rights of all citizens in Indonesia and provides recommendations to achieve this goal.

Keywords: human rights; health; constitution

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INTRODUCTION

Everyone has the right to live a healthy life. Everyone has the right to affordable, accessible, high-quality medical care regardless of gender, religion, age, race, or nationality.¹ Following World War II (WWII), it became accepted that everyone should have access to necessities, including healthcare, education, and gainful employment. The right to "enjoy the maximum attainable standard of health" was

¹ See, Article 3 International Covenant on Economic, Social and Cultural Rights (ICESCR); Article 25 Universal Declaration of Human Rights; and UN Committee on Economic and Social Council (CESCR), "General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)," Refworld, August 11, 2000, <https://www.refworld.org/docid/4538838d0.html>.

recognized as a fundamental human right in the 1946 World Health Organization's (WHO) Constitution.² It wasn't until the Universal Declaration of Human Rights (UDHR) was adopted two years later that people were officially recognized as having a right to medical care. Notwithstanding this political document's evident desire to establish health as a fundamental right, the right to health for all citizens did not become a legally enforceable obligation to the signatory state until Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1966.³ The Alma-Ata Declaration established health as a universal objective in 1978, with universal access to primary health care based on universal human rights.⁴

Healthy individual has more significant opportunities to pursue their passions, raise their quality of life, extend their lifespan, and enjoy other fundamental human rights. Health is not just the absence of disease; it's also the foundation upon which one may build a successful and fulfilling life, one in which one can take part in the civic life of their community and the economic and cultural life of their country. Irreconcilable with other forms of prosperity, health is one of the most fundamental human rights.⁵ The right to health is a cornerstone of advancing human flourishing and progress.

Reeves argues that because human rights and the right to health are inextricably linked, we must do three things: (1) respect rights, which means to refrain from interfering with or introducing new forms of deprivation of attention and protected interests; (2) protect rights, which means to ensure that others respect rights adequately; and (3) provide, which means to assist those whose interests are protected and are suffering a reversible setback.⁶

Although it was evident that the need to fulfil the right to health remains an issue worldwide, it still raises the question of how the right to health may achieve its objectives, specifically by carrying out these rights through a functional legal system. It's fair to say that the best in any given task has distinctive approaches. Too many interpretations or erroneous judgements regarding the relationship between health and human rights are reinforced by the current situation, a popular argument against economic, social, and cultural rights, including the right to health.

Since the Constitution of the United States of Indonesia (RIS) in 1949, the right to health has been sought and, at long last, guaranteed. The Ruler makes "every serious effort" to improve public health and cleanliness, as Article 40 of the RIS Constitution states. Article 40 of the RIS Constitution was approved as Article 42 of the Constitution upon the return of the union state form to the form of a unitary state and the passing of the Interim Constitution of 1950 (UUDS). The UDHR was adopted by the United Nations in 1948 and guarantees the right to health care. In Article 25, it is stated that "everyone has the right to a standard of living that guarantees health and well-being for himself and his family..." This includes adequate nutrition, clothing, shelter, and medical care.

In keeping with this, "the enjoying of the highest attainable quality of health is one of the fundamental rights of every human being," as stated in the 1948 WHO Constitution. Instead of "human rights," the word "fundamental rights" is used, which translates exactly to "basic rights" in Indonesian.

In subsequent years, national and international legislation evolved to further protect people's right to health as a fundamental human right. Everyone has the equal right to achieve an ideal health degree, as stated in Article 4 of the Law of the Republic of Indonesia Number 23 of 1992 concerning Health. The ICESCR was founded in 1966 as one of many human rights treaties adopted under international law.⁷ The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest

² Lisa Montel et al., "How Should Implementation of the Human Right to Health Be Assessed? A Scoping Review of the Public Health Literature from 2000 to 2021," *International Journal for Equity in Health* 21, no. 1 (September 22, 2022): 1, <https://doi.org/10.1186/s12939-022-01742-0>.

³ Office of the United Nations High Commissioner for Human Rights, Economic, Social, and Cultural Rights; Handbook for National Human Rights Institution (UN Publication 2005)

⁴ See, International Conference On Primary Health Care. Declaration of Alma-Ata. 1978.

⁵ Jennifer H. M. Mike, "Access to Essential Medicines to Guarantee Women's Rights to Health: The Pharmaceutical Patents Connection," *The Journal of World Intellectual Property* 23, no. 3-4 (2020): 473, <https://doi.org/10.1111/jwip.12161>.

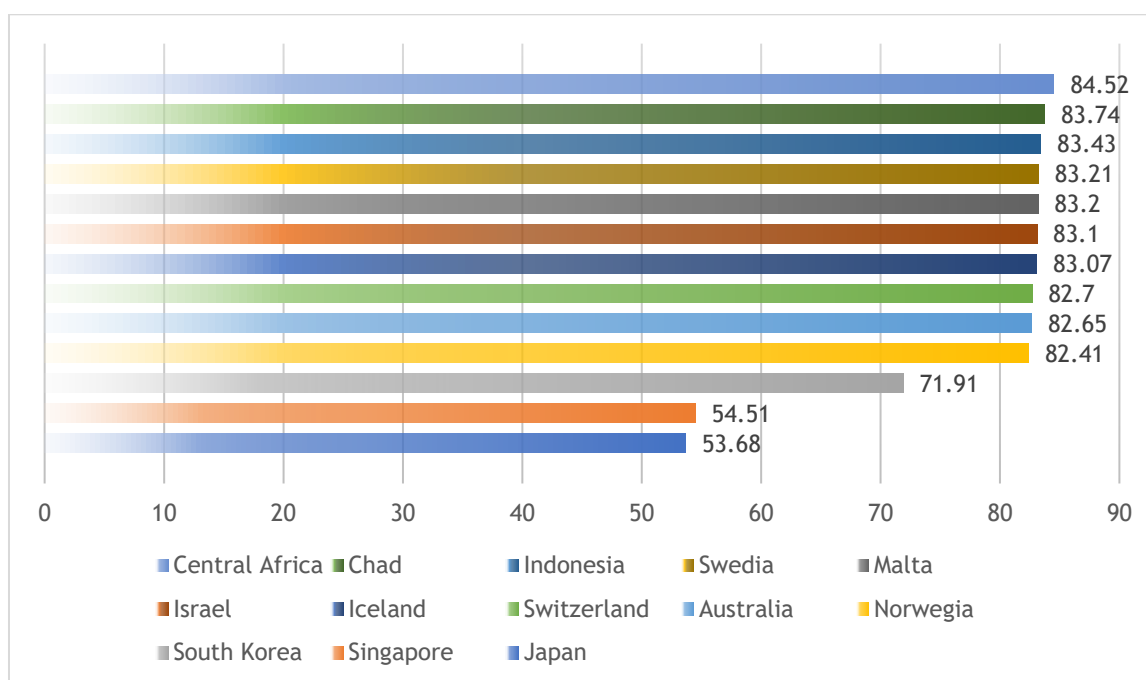
⁶ Anthony R. Reeves, "Standard Threats: How to Violate Basic Human Rights," *Social Theory and Practice* 41, no. 3 (August 1, 2015): 403, <https://doi.org/10.5840/soctheorpract201541322>.

⁷ Rosalia Dika Agustanti, Yuliana Yuli Wahyuningsih, and Satino, "Guarantee of Worker Rights During the Covid 19 Pandemic," *Jambura Law Review* 3, no. Special Issues (May 1, 2021): 82, <https://doi.org/10.33756/jlr.v3i0.7914>.

possible quality of bodily and mental health, as stated in paragraph (1) of Article 12 of the International Covenant on Economic, Social, and Cultural Rights.

It is often said that health is not everything, but without health, everything else is worthless; this is in keeping with the explanation that health is one of the basic human requirements. Realizing the right to health is a worthy goal that should be advocated for. Indonesia has been an independent nation for more than 77 years, yet the WHO reports that the country's health infrastructure has not improved significantly.⁸

In the World Health Report published by WHO in 2020, Indonesia's public health degree lags far behind other Asian countries, such as Thailand, Malaysia, Brunei Darussalam, India, and China, and even far below developing countries, such as Sri Lanka. Using the "Life Expectancy" indicator, WHO ranked Indonesia's health degree at 115 out of 194 countries, as illustrated in Figure 1—Indonesia's Life Expectancy in 2022, below:⁹



Indonesia's position in the World Health Report issued by WHO is a consequence of the problems that arise in protecting health rights from the perspective of Human Rights and the Indonesian constitution. Indonesia still has issues with the gap in access to quality health services between the more capable and the underprivileged. In addition, there is still discrimination in access to health services experienced by minority groups such as people with disabilities and people living in remote areas. The problem can at least be described as follows:

1) *Discrimination in the Social Security Organizing Agency (BPJS) Service.*¹⁰ BPJS patients, especially

⁸ Sri Mulyani, Indonesia's Minister of Finance, has put a premium on the health sector's share of the budget. In 2022, spending will account for 9.4 percent of the nation's total, significantly greater than the statutory requirement of 5 percent. The Minister of Health of the Republic of Indonesia has affirmed his government's commitment to health system reform, despite the fact that the majority of the health budget will be earmarked for dealing with Covid-19. These funds will be used to bolster health promotion and prevention efforts. Nonetheless, in light of the policy, assuming that the epidemic has revealed previously unknown flaws in the healthcare system is a major oversimplification. There are many long-standing issues with Indonesia's healthcare system. They include a lack of necessary health facilities, a shortage of qualified medical professionals, and unequal access to care. A comprehensive set of recommendations for improving Indonesia's healthcare system was presented in a 2017 critical review. The health system in Indonesia has been chronically underfunded, receiving only approximately 3% of GDP. Since most public health and service delivery budgets were decentralized to local governments in 2001, there have been many debates concerning regional disparities in infrastructure and medical care. Health outcomes continue to differ significantly across the sexes, as shown by a number of other indices. See, Ariane Utomo and Firman Witoelar, "Diagnosing Indonesia's Health Challenges," theinterpreter, September 14, 2021, <https://www.lowyinstitute.org/the-interpreter/diagnosing-indonesia-s-health-challenges>.

⁹ The World Bank, "Life Expectancy at Birth, Total (Years) - Indonesia | Data," accessed February 28, 2023, <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=ID>.

¹⁰ One example of a case of BPJS service discrimination is the case of Samuel. This BPJS patient had to undergo a series of medical tests and waited for a turn for days to undergo eye surgery at Cipto Hospital Mangunkusumo (RSCM) Jakarta. However, in the end, the operation could not be performed as the room was packed, and Samuel was only asked to take the sequence number for his

grade 2 and grade 3, often experience discrimination when checking their health in a hospital. For example, BPJS patients are required to wait longer than private insurance patients or are provided with inadequate services. This case often occurs because the rates set by BPJS are too low, thus reducing hospital profits.

- 2) *Access to Health Services for Disabilities*.¹¹ There are still many health facilities that are not disability-friendly. Some examples are inadequate entry for wheelchairs or inadequate sanitation facilities for people with disabilities. This makes it difficult for people with disabilities to get adequate health care.
- 3) *Lack of Essential Medicines*.¹² Some hospitals in certain areas still lack essential medicines such as antiretroviral drugs for treating Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS). This problem occurs due to medical staff's lack of knowledge and skills and drug distribution and procurement issues.
- 4) *Illegal Health Practices*.¹³ There are still many illegal health practices in Indonesia, such as selling illegal drugs or using alternative therapies that are not tested for safety. This practice is hazardous for the patient and can aggravate his health.
- 5) *Lack of Medical Personnel in Certain Areas*.¹⁴ Many regions in Indonesia still lack medical personnel, such as doctors, nurses, and other health workers. As a result, residents in the area have difficulty obtaining adequate health services and have to walk to the city to get the necessary care.

When viewed through the lens of Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), which states that "Everyone has the right to good health," and Article 28I paragraph (2), which states that "Everyone has the right to equality before the law and equal legal protection without discrimination," it becomes clear that the issues mentioned above constitute a violation of human rights. Further regulation of this assertion is found in Article 4 paragraph (2) of the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (Law on Human Rights), which states: "Everyone has the right to protection against all forms of discrimination, including discrimination in obtaining access to health services." This demonstrates the need for the Indonesian government to eliminate discrimination in health care access.

Article 27(1) of the Law on Human Rights states, "Everyone has the right to protection of the right to

turn in the future. Samuel was disappointed with the ministry Hospital to BPJS Kesehatan patients and complained about bureaucracy in Hospital, the largest and most complete in Indonesia. Although BPJS Kesehatan paid all claims for his surgery, Samuel still lamented his horrible experience with hospital services. See Rosmiyati Dewi Kandi, Yohannie Linggasari, and Aghnia Adzka, "Cerita Terlantar, Kisah Rutin Pasien BPJS Kesehatan," April 9, 2015, <https://www.cnnindonesia.com/nasional/20150409121149-20-45367/cerita-terlantar-kisah-rutin-pasien-bpjs-kesehatan>.

¹¹ Problems related to access to health services for disabilities are illustrated through data that show 31% or around 8 million of the total 26 million people with disabilities in Indonesia do not have health insurance (JAMKES), even though they need health services regularly. In addition, low-knowledge health workers in understanding the needs of disabilities is also an obstacle in providing optimal health services for people with disabilities. *Ibid*.

¹² The shortage of essential drugs can be seen from the lack of stock medicine antiretrovirals (ARV). As one of the essential medicine, ARV for the treatment of HIV / AIDS in Indonesia is still limited and has not been able to meet the needs of PLHIV optimally. The COVID-19 pandemic has exacerbated this condition, negatively impacting the supply chain, availability, and accessibility of ARVs in the country. One solution to the issue is the administration of drugs in Multi-months or Multi-month Dispensing (MMD) so that PLHIV can obtain direct drug stocks for 3-6 months and reduce the frequency of visits to health facilities. However, the administration of the drug multi-this month has not been widely implemented, including in Indonesia. A survey of the immediate need for PLHIV in the context of COVID-19 shows that about 47.6% of PLHIV only have a stock of ARV drugs for less than one month. Apart from the problem of drug stocks, Indonesia is also still overwhelmed by tackling HIV/AIDS. Indonesia's poor achievement in meeting the 90-90-90 target that must be achieved this year is proof of this. In addition, PLHIV has also been plagued by a lot of anxiety related to the COVID-19 pandemic, concerns about stigma related to HIV status, and the ability to get drugs. See Prihardani Ganda Tuah Purba, "Suramnya Nasib Pengidap HIV di Tengah Pandemi - DW - 09.07.2020," *dw.com*, accessed March 1, 2023, <https://www.dw.com/id/suramnya-nasib-pengidap-hiv-di-tengah-pandemi-covid-19/a-54102044>.

¹³ Problems related to the number of illegal health practices can be seen, one of which is when Police Gunungkidul successfully arrested suspect M who has been suspected of illegal health practices since September 2019 in Kapanewon Ponjong Gunungkidul. The suspect is not a doctor but a graduate of SPK and a retired company Pertamina. The case came to light after receiving a citizen's report. The suspect has no health practice license and faces up to 15 years in prison. It is suspected that dozens of patients were victims of illegal health practices carried out by the suspect. See *Liputan6.com*, "Polisi Ungkap Praktik Kesehatan Ilegal di Gunungkidul," *liputan6.com*, July 25, 2020, <https://www.liputan6.com/regional/read/4314386/polisi-ungkap-praktik-kesehatan-ilegal-di-gunungkidul>.

¹⁴ According to WHO data in 2020, Indonesia has the most significant number of doctors in Southeast Asia, with 170,338 people. However, the number of doctors per 10,000 inhabitants in Indonesia is only 6.23, the third lowest in Southeast Asia after Cambodia and Myanmar. Singapore has the highest doctor ratio in Southeast Asia at 24.6 per 10,000 inhabitants. Malaysia and Brunei Darussalam have a ratio of doctors per 10,000 inhabitants of 22.86 and 16.09, respectively. See Shilvina Widi, "Rasio Dokter Indonesia Terendah Ketiga di Asia Tenggara," *DataIndonesia.id*, October 24, 2022, <https://dataindonesia.id/ragam/detail/rasio-dokter-indonesia-terendah-ketiga-di-asia-tenggara>.

health, which includes the right to environmental health, the prevention and treatment of diseases, and the obtaining of adequate health services." However, inadequate health facilities and a lack of medical personnel in some areas may prevent the protections intended in such provisions from being fulfilled. Hence, the Law on Human Rights acknowledges this.

Considering that all health services must meet set health standards, the Indonesian government must swiftly investigate issues, including illicit health practices, alternative medicine that has not been evaluated for safety, and the fabrication of pharmaceuticals. The Indonesian government has to step up its monitoring of the industry and its enforcement of regulations against companies that fail to comply.

PROBLEM

- 1) What are the aspects of health rights protection from the perspective of human rights and the Indonesian constitution?
- 2) What is the ideal pattern in health protection for citizens within the framework of human rights and the Indonesian constitution?

RESEARCH METHOD

Studies like this are classified according to the different sorts of normative legal research conducted based on the issues and/or themes brought up as subjects for study. Philosophy and critical analysis are at the heart of this study's methodology; we aim to provide novel insights that provide meaningful solutions to our central research questions.¹⁵ And will be evaluated using a descriptive-analytic approach, detailing relevant legal theory and best-practice law enforcement procedures.¹⁶

DISCUSSION

1. Aspects of Health Rights Protection in the Perspective of Human Rights and the Indonesian Constitution

Aspects of health rights protection from the perspective of human rights and the Indonesian constitution can be seen from the point of view of various legal theories. Some of the relevant legal theories in this context are human rights theory, constitutionalism theory, public health theory, and health system theory.

From the perspective of human rights theory, the right to health is considered a fundamental right and must be guaranteed by the state as part of the most basic human rights. The state must ensure that health services are affordable and accessible without discrimination.¹⁷ In this context, the protection of health rights from the perspective of human rights and the Indonesian constitution shows that the right to health should be considered a fundamental human right and should be fulfilled by the state following the constitution and human rights law.

From the perspective of the theory of constitutionalism, the constitution is considered a legal document regulating the relationship between the state and the people. Indonesia's constitution provides a legal basis for states to protect the health rights of their citizens and ensure access to quality health services.¹⁸ In this context, the protection of health rights in Indonesia from the perspective of constitutionalism shows that the protection of health rights in Indonesia can be understood through constitutionalism which affirms that the state must ensure the availability of decent and adequate health services for all citizens.

From the perspective of public health theory, health is considered a community issue that needs to be managed collectively by the government and society. In this context, the protection of health rights in Indonesia from a public health perspective shows that the state needs to implement a holistic public health approach to fulfil health rights.

From various perspectives of legal theory, it can be concluded that the right to health is a

¹⁵ Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi* (Bandung: Alfabeta, 2017), 45.

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2014), 22.

¹⁷ Zahara Nampewo, Jennifer Heaven Mike, and Jonathan Wolff, "Respecting, Protecting and Fulfilling the Human Right to Health," *International Journal for Equity in Health* 21, no. 1 (March 15, 2022): 36, <https://doi.org/10.1186/s12939-022-01634-3>.

¹⁸ Hanim Hamzah et al., "Legal Systems in Indonesia: Overview," *Practical Law*, accessed March 1, 2023, [http://uk.practicallaw.thomsonreuters.com/w-010-7310?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](http://uk.practicallaw.thomsonreuters.com/w-010-7310?transitionType=Default&contextData=(sc.Default)&firstPage=true).

fundamental human right and must be guaranteed by the state following the constitution and human rights law. In this regard, aspects of protecting health rights from a human rights perspective and the Indonesian constitution can be seen from several regulations and articles. The following is an analysis of some related laws and articles:

- 1) *Article 28G of the 1945 Constitution*. This article guarantees every person the right to protect self, family, honour, dignity, and property under his power and the right to obtain a proper education and social welfare. This includes the right to health.
- 2) *Article 9 of the Law on Human Rights*. This article affirms that everyone has the right to proper physical and mental health.
- 3) *Article 44 of the Law on Health*. This article guarantees the right of everyone to get quality and affordable health services.
- 4) *Article 2 paragraph (2) of Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower (Law on Manpower)*. This article confirms that employers must provide health insurance to workers following the provisions of laws and regulations.
- 5) *Article 20 paragraph (1) of Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals (Law on Hospitals)*. This article stipulates that everyone has the right to quality, safe, and comfortable health services.

Based on the arrangements above, it can be concluded that the state must ensure that every Indonesian citizen has proper and adequate access to health services. Such access must be without discrimination and inhumane conduct. In addition, it needs to be underlined that maintaining the health and welfare of all Indonesians is the duty of the state and the community. Especially for workers, the right to health insurance must be given by employers. These circumstances are ideals that should be realized. But many Indonesians still have difficulty accessing quality and affordable health services. In addition, there is still discrimination against certain community groups in gaining access to health, such as women, children, people with disabilities, and minority groups.¹⁹ Such a situation cannot be separated from problems related to obstacles to implementing Indonesian laws and regulations in the health sector. This is due to the absence of a common vision, and implementation and enforcement supervised in the legislation, even if it is comprehensive and detailed.²⁰

The above circumstances indicate that making more significant efforts to fulfil all citizens' health rights is still necessary. The Government of Indonesia must make these efforts to improve the accessibility, quality, and availability of health services and eliminate discrimination in health services. In addition, the government also needs to take strategic steps to overcome obstacles in implementing laws governing health, such as increasing the availability and quality of human health resources.

In the broader context, fulfilling the right to health is also closely related to other human rights, such as education, employment, and a healthy environment. Therefore, efforts to ensure the fulfilment of health rights must be carried out comprehensively and holistically, involving all relevant parties, including the government, society, and the private sector.

2. Ideal Patterns in Health Protection for Citizens Within the Framework of Human Rights and the Indonesian Constitution

The availability, accessibility, acceptability, and quality of health care are four fundamental elements that must be met if the state is to respect, preserve, and fulfil its commitments to apply human rights norms on the right to health. Internalization, meanwhile, takes the form of state obligations to provide for, promote, and defend health rights, articulated through policies guided by the principles of (a) respecting, (b) protecting, and (c) fulfilling such rights.

The right to health, and its actualization, must be based on the concept of nondiscrimination, which must be extended to marginalized populations. The UN Committee on Economic, Social, and Cultural Rights (UN-CESCR) developed this framework in its Minimum Core Obligations to guarantee non-discriminatory access to healthcare facilities' goods and services, particularly for marginalized and at-

¹⁹ Virginia Wiseman et al., "An Evaluation of Health Systems Equity in Indonesia: Study Protocol," *International Journal for Equity in Health* 17, no. 1 (September 12, 2018): 138, <https://doi.org/10.1186/s12939-018-0822-0>.

²⁰ Yodi Mahendradhata et al., *The Republic of Indonesia Health System Review*, ed. Krishna Hort and Walaiporn Patcharanarumol, vol. 7 (1), Health Systems in Transition (New Delhi: Regional Office for South-East Asia, World Health Organization, 2017), 42, <https://apps.who.int/iris/bitstream/handle/10665/254716/9789290225164-eng.pdf?sequence=1&isAllowed=y>.

risk populations. Furthermore, the Committee underlined that disadvantaged populations should be protected by adopting initiatives that do not require a lot of money despite severe resource constraints due to adjustment processes, economic recessions, or other circumstances.

Economic, social, and cultural rights should be understood as an ongoing process, with the Basic Core Obligations as the first step rather than the last. Thus, this idea shouldn't be viewed as a minimal strategy focusing solely on the law's letter.²¹ Understanding the obligation in fulfilling the right to health is often mistaken for an end goal or target by the Government of Indonesia, even though the minimum obligation is the first step in realizing the right to health standards that can be achieved.

The problem of protecting health rights in Indonesia contemporary consists of many subjects, including problems with children, children and adolescents, persons with disabilities, the elderly, and people with HIV/AIDS (PLHIV), which will be described more clearly in the following table:

No.	Subject	Current Conditions	Problems
1.	Woman	There have been several programs of the Ministry of Health (Kemenkes) related to health services for women through maternal and child health service programs, namely: (1) health services before pregnancy; (2) family planning (KB) services; and (3) health services for victims of violence against women and children (KtPA) and trafficking offences. Improving health for mothers, children, family planning, and reproductive health is one of the three priorities of the 2020-2024 RPJMN.	<p>1) <i>Discrimination Against Health.</i> One of the problems related to the right to health for women in Indonesia that have not yet ended is the practice of cutting or requiring female genitalia (Female Genital Mutilation/Circumcision; FGM/C). Following up on the phenomenon of FGM/C in Indonesia, the Government, through the Ministry of Health related to female circumcision, research conducted by Komnas Perempuan in collaboration with the Center for Population and Policy Studies of Gajah Mada University (PSKK UGM) revealed that in 2017, there were 10 provinces and 17 regencies/cities that were still found to have practices (FGM/C) with variations in schemes and knowledge in the tradition and knowledge in the medical realm.²²</p> <p>2) <i>Sexual and Reproductive Health.</i> Access to sexual and reproductive health is everyone's right, but access to reproductive health services is difficult for unmarried women. For example, to use BPJS Kesehatan financing facilities in a Pap smear examination (an examination carried out for early detection of cervical cancer or cervical cancer), one of the conditions is to be married. In addition, in accessing reproductive healthcare facilities, unmarried women often experience discriminatory attitudes from health workers that make some women unable to check reproductive health.</p>
2.	Childhood and Youth	The realization of public health programs such as primary immunization for children and exclusive breastfeeding shows a low rate of increase. The problem of the prevalence rate of immunization for children	<p>1) <i>Accessibility</i> Regarding accessibility in the youth group, there is a problem with the lack of education and provision of health services. For example, the persistence of reproductive health myths, lack of access to questions to convey menstrual problems, disharmonious relationships between children and parents (especially with mothers), <i>toxic relationships with parents, pregnancy</i></p>

²¹ UN Committee on Economic, Social and Cultural Rights (CESCR), "General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)," Refworld, December 14, 1990, <https://www.refworld.org/docid/4538838e10.html>.

²² Ainur Rofiq et al., *Kertas Konsep: Pencegahan Dan Penghapusan Pematangan/Pelukaan Genitalia Perempuan (P2GP)*, ed. Nina Nurmila (Jakarta: Penerbit Komisi Nasional Anti Kekerasan terhadap Perempuan (Komnas Perempuan), 2019), 6, https://komnasperempuan.go.id/uploadedFiles/webOld/file/pdf_file/2020/Publikasi%202019/Kertas%20Konsep%20Pencegahan%20dan%20Penghapusan%20Pematangan_Pelukaan%20Genitalia%20Perempuan%20_P2GP.pdf.

	that decreased in 2013-2018 is not only in the accessibility problem but also in the views of several different community groups regarding the provision of immunization for Children.	(unwanted or in adolescence), sexually transmitted infections, vaginal discharge, <i>cyber-bullying</i> , and gender-based violence <i>online</i> .
		2) <i>Availability</i> The Indonesian Child Protection Commission (KPAI) stated that the number and distribution of pediatricians in Indonesia are still uneven, especially in Eastern Indonesia. Health Power Research (Risnakes) data in 2017 showed that the percentage of Government and Private General Hospitals with pediatric disease specialists in Maluku, North Maluku, West Papua, and Papua Provinces did not reach 80%. ²³
3. People with Disabilities	The fulfilment of the right to health for persons with disabilities in Indonesia still encounters many obstacles regarding availability, accessibility, and quality. Affirmative action or program forms that accommodate the needs of persons with disabilities, in general, have not been met	1) <i>Healthcare Availability</i> The problem of the availability of the right to health for persons with disabilities is found in many ways. Diverse people with disabilities need different health facilities. For people with mental/psychosocial disabilities, medical treatments such as antipsychotics and feel-natural stabilizing drugs are urgently needed. ²⁴ 2) <i>Accessibility</i> Physical accessibility problems are found in several health facilities, such as Community Health Centers (Puskesmas) and hospitals that are still not disability-friendly. In some cases, health services are located on the upper floors. At the same time, no ramps, elevators, or other facilities make it easier for people with disabilities (certain varieties, such as physical disabilities) to access.
4. Elderly	In the 2020-2024 RPJMN and the Ministry of Health's Strategic Plan (Renstra) for 2020-2024, indicators of the percentage of districts/cities that provide elderly health services have been included. This is an excellent first step in increasing attention to the health of the elderly in Indonesia. However, there are still many records of the implementation of elderly health in Indonesia in terms of availability, quality, and accessibility	1) <i>Availability</i> For the elderly, especially those who fall into the category of partial and total dependence, <i>home care</i> is a much-needed thing. <i>Home care</i> services are essential to provide support for the elderly to continue to maintain activities in meeting their daily needs. However, home care services in Indonesia are still very minimal. Whereas in Article 5 of the Regulation of the Minister of Health of the Republic of Indonesia Number 79 of 2014 concerning the Implementation of Geriatric Services in Hospitals (Permenkes concerning the Implementation of Geriatric Services in Hospitals), home care is included in the type of simple geriatric services that are minimal. Regarding the availability of geriatric services, only 264 of the 2,820 government hospitals carry out geriatric services, according to the Minister of Health concerning implementing Geriatric Services in Hospitals. ²⁵ 2) <i>Accessibility</i> Regarding physical accessibility, many health facilities, Puskesmas, and Hospitals are still not yet elderly-friendly, especially in rural areas.

²³ Badan Penelitian dan Pengembangan Kesehatan, "Laporan Riset Ketenagaan Di Bidang Kesehatan (RISNAKES) 2017: Rumah Sakit," Buku 2 (Jakarta: Kementerian Kesehatan Republik Indonesia, 2018).

²⁴ Kementerian Sosial Republik Indonesia, *Pedoman Rehabilitasi Sosial Melalui Unit Informasi Dan Layanan Sosial (UILS) Bagi Penyandang Disabilitas Mental* (Jakarta: Direktorat Rehabilitasi Sosial Orang Dengan Kecacatan, 2013).

²⁵ Presented L1 (Foundations engaged in the field of Sustainability) in the event Focus Group Discussion Right to Health organized by Komnas HAM in Jakarta, on date 11 August 2020



		<p>Research conducted by Perkumpulan Prakarsa stated that more than 80% of respondents who accessed health services at puskesmas did not receive special treatment for the elderly, such as the condition of health facilities (faskes) whose roads were not smooth, and the existence of primary health facilities that did not have different queues for the elderly.²⁶</p> <p>3) <i>Quality</i> Health facilities for the elderly in rural areas in Indonesia are health centres for the elderly. In addition to the limited number, the quality of service is also not optimal. The quality of human resources (HR) trained in elderly health care must be a concern. Technical training for elderly health services needs to be provided to relevant human resources, such as doctors, nurses, nutritionists, public health workers, physical therapists, elderly cadres, social workers, and psychologists.²⁷</p>
<p>5. People With HIV/AIDS (PLHIV)</p>	<p>Since 2013, there has been no policy update related to PLHIV in Indonesia. What needs to be considered from policies related to PLHIV in Indonesia is that certain institutions can be a forum for all PLHIV that handles and helps PLHIV, not only a matter of treatment and healing but also about social and economic life and other scopes. In addition, many local governments are not ready to deal with HIV / AIDS cases, especially regarding the availability of the number of drugs according to the actual cases of people with HIV / AIDS infection.</p>	<p>1) <i>Availability</i> Regarding periodic test services for PLHIV, implementation in some regions is still not running due to a lack of socialization regarding whether the test depends on BPJS. In addition, not many PLHIV know about the benefits of these periodic tests. Many service providers still have not received socialization regarding these benefits, so many refuse to include periodic test fees for PLHIV to be covered by BPJS.²⁸</p> <p>2) <i>Accessibility</i> The stigmatization that PLHIV often experiences results in them getting discriminatory treatment regarding accessing public services, including health services. Data from the Community Legal Aid Institute (LBHM) revealed that throughout 2017-2018, at least 387 rights violations and ill-treatment cases were experienced by PLHIV and high-risk groups in 17 cities in Indonesia. 138 of the 387 cases were indicated as alleged human rights violations, of which 73 were related to the right to health. Furthermore, 20 cases were found to be cases of PLHIV, which were denied health services, both general and special HIV / AIDS services.²⁹</p>

Each of the five categories stated above faces unique challenges regarding ensuring their access to health care. Article 28H paragraph (1) and Article 34 paragraph (3) of the 1945 Constitution recognize health as a fundamental human right, making it the state's duty to ensure its citizens' physical and mental well-being by funding and establishing adequate health care facilities and public service infrastructure.


Health is a human right and one of the aspects of welfare that must be achieved following the goals of the Indonesian nation, as referred to in Pancasila and the 1945 Constitution, which was later

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Displayed Sdr. B of O1 (NGO Observer of PLHIV) in the event Focus Group Discussion Right to Health organized by Komnas HAM in Jakarta, on date 11 August 2020.

²⁹ Albert Wirya and Fuji Aotari, "Ancaman Bagi Kesehatan Populasi Kunci HIV Dan TB: Sebuah Laporan Pelanggaran HAM" (Jakarta: Lembaga Bantuan Hukum Masyarakat, 2017), <https://lbhmasyarakat.org/wp-content/uploads/2017/11/Ancaman-bagi-Kesehatan-Populasi-Kunci-HIV-dan-TB-LBH-Masyarakat-2017.pdf>.



elaborated upon in the Law on Health. A person's right to health under the Law on Health includes the opportunity to reach their optimal health level through the services provided by healthcare providers.

If "the maximum degree of health" means that everyone should have access to the best possible health care and resources, it might be argued that health care as a human right has not been properly realized. Everyone has a right to the health care, resources, and environment they need to stay healthy and recover from illness. The fact remains, however, that gaps or disparities exist in health and the utilization of health care. Fundamental to human rights is the idea of and the achievement of equality.

Based on the description above, an ideal pattern can be described in fulfilling the right to health as a human right as follows:

1) *Women*

Policies and regulations are needed to support the reduction of maternal mortality, including strengthening regulations to prevent early marriage and various government programs, such as improving sexual and reproductive health services that can be reached easily. In addition, access for every woman to sexual and reproductive health services can be guaranteed by preparing a regulatory framework on reproductive health. Existing regulations on reproductive health should not be limited to technical details focused on security and safety but also non-discriminatory accessibility. Discrimination and stigmatization on any basis, including marital status, should be eliminated. The government also needs to create a mechanism for supervision and complaints to follow up on cases of stigmatization and discrimination regarding sexual and reproductive health services.

2) *Childhood and Youth*

The focus of child health programs that still rest on the territory of Western Indonesia or in the central economic region can be considered a form of indirect discrimination, as stated in Paragraph 19, UN-CESCR General Comment No. 14: The right to the highest attainable standard of health (Art. 2 of the Covenant), that improper allocation of health resources can have an impact on inevitable discrimination. Efforts to equalize resources related to the fulfilment of children's health must continue to be realized progressively, which means that it continues to experience improvements and improvements. However, this cannot be interpreted as an improvement in numbers or indicators alone. Significant improvements must be achieved as stated in Article 24 Paragraph (4) of the United Nations Convention on the Rights of the Child (UNCRC), as well as the concept of the right to the highest attainable standard of health. In addition, the commitment of relevant central and local government elements is needed to suppress cases of child marriage in Indonesia, especially in rural areas. One of the most important recommendations is the preparation of a Government Regulation to accelerate technical regulations such as tightening marriage dispensations, child marriage supervision and prevention programs, and programs aimed at suppressing child marriage.

3) *People with Disabilities*

Multisectoral cooperation is needed to realize disability-friendly health facilities, especially primary ones. Both central and local government agencies must use aligned guidelines in building physical accessibility support facilities for persons with disabilities. Support is needed to make this accessibility a priority in short-medium-long-term development planning to budgeting for both local and central governments. For example, in constructing a hospital or Puskesmas, public health and social work agencies must work together to determine and build the facilities and features needed for people with disabilities. The legislature, in this case, the Regional People's Representative Council (DPRD) and the House of Representatives of the Republic of Indonesia (DPR RI), can also carry out their roles as supervisors and drafters of regulations and carry out budget legislation functions that can support the physical accessibility of persons with disabilities in public services including health services.

4) *Elderly People*

Long-term care services are also helpful for the elderly with moderate to severe dependence to continue to carry out their daily activities. The long-term care program cannot be separated from the existence of competent caregivers and also home care/home visit services that are indispensable to accommodate the needs of the elderly with moderate to severe dependence. The

availability of competent caregivers requires the socialization of standard guidelines, massive training, and active recruitment of human resources. In addition, seniors who are in care in nursing homes, both government-owned and private, should have the same right to the primary health services needed. The availability of clean and healthy facilities and housing for the elderly in nursing homes is the state's responsibility. The state must have a supervision and evaluation mechanism to guarantee fundamental freedoms and human rights for the elderly.

5) *People With HIV/AIDS (PLHIV)*

Stigmatization is the main factor inhibiting PLHIV as a critical population from accessing public health facilities. This stigmatization then forms a pattern of discrimination either directly or indirectly, such as discriminatory policies or regulations and acts of discrimination directly by health facilities or medical personnel and the public to PLHIV. This discriminatory obstacle violates human rights principles, specifically the right to health. To fulfil the right to health for PLHIV, an inclusive regulatory, institutional, and health development strategy framework is needed as a form of state responsibility as a stakeholder of the rights of all its people. The state must implement a progressive set of actions, strategies, and policies to address the phenomenon of drug withdrawal and ensure public access to HIV testing and other affordable and safe treatments.


In carrying out its duty to fulfil the right to health as a human right, the Government of Indonesia needs to pay attention to the special needs of each community, such as women, children and adolescents, persons with disabilities, the elderly, and people with HIV/AIDS. The Indonesian constitution and the Law on Human Rights protect this right to health. Efforts to equalize resources and accessibility of non-discriminatory health services are critical in fulfilling the right to health as a human right. The existence of discrimination and stigmatization in health services needs to be eliminated so that everyone, without exception, can get decent and quality health services. The government must also pay attention to the availability of qualified medical personnel and adequate health facilities throughout Indonesia, including remote and hard-to-reach areas. By implementing the ideal pattern in fulfilling the health rights that have been outlined, it is hoped that human rights will be fulfilled and the Indonesian people can achieve better health.

CONCLUSION

To fulfil the right to health as a human right, the Indonesian government still needs to make significant efforts to improve the accessibility, quality, and availability of health services and eliminate discrimination in health services. Although the Law on Human Rights and the Indonesian Constitution guarantee the right to health for all citizens without discrimination, its implementation still has problems. Therefore, efforts to ensure the fulfilment of health rights must be carried out comprehensively and holistically, involving all relevant parties, including the government, society, and the private sector. The government needs to pay attention to the special needs of each community, such as women, children and adolescents, persons with disabilities, the elderly, and people with HIV/AIDS, and pay attention to the availability of adequate medical personnel and health facilities throughout Indonesia, including remote and hard-to-reach areas. Human rights are hoped to be fulfilled with proper implementation, and the Indonesian people can achieve better health.

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