

Model of Government Policy in Reproductive Health Services

(In the study of gender equality and women's empowerment)

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Abstract— *Based on SDKI 2012, the rate of maternal deaths was 359 per 100.000. This number is high compared to other ASEAN countries. Reproductive health is a part of human rights and one of SGD's goals. This article is a result of legal research which analysed health regulations in supporting the implementation of reproductive health developments. The government has made relevant policies to provide reproductive health for people such as maternity waiting house provision, policies in reducing delivery assistance by shamans, extra funds and education both for the community and for couples who are planning for marriage. Nevertheless, these policies haven't been supported by the appropriate regulations yet, therefore the legal bindings and law enforcement are less than optimal and are not able to continue on the policies at their strongest for future leadership.*

Keywords— *Human Right, Instrument Policy, Maternal Health Services, Law Enforcement, and State Responsibility*

I. INTRODUCTION

Reproductive health is physical, mental, and social health, and is related to reproductive systems, functions, and processes. Thus reproductive health services are a part of health services that also has the following scope: maternal health services, medical emergency indications and rape as exceptions to the prohibition of abortion, and reproduction with help or in the case of abnormal pregnancies.

Health development has relevance in relation to global policies, beginning with a mission to prevent the spread of disease as a result of the increasing frequency of inter-state trade. At the beginning of the 21st century, this convergence is getting stronger, as demonstrated by the global commitment to improve health status is clearly reflected in the Millennium

Development Goals (MDGs), of which three of the eight MDGs are directly related to health. In many of the MDGs studies, health is also seen of as having close links to issues relating to trade, economic growth, social development and security [1].

Based on the Indonesian Demographic and Health Survey (IDHS) in 2012, it was found that the average maternal mortality rate reached 359 per 100 thousand live births. Maternal mortality is recognised as a human rights violation by the United Nations, is constitutional and human rights could be used more effectively to improve maternity services and to ensure access to drugs that are essential for reproductive health [2].

In accordance with the facts and results of the Basic Health Research of 2015, several programs from 8 MGDs programs, especially in the field of health, have not been achieved, while in the period of MGDs up until 2015, the MGD program was replaced with Sustainable Development Goals (SDGs). The Era of Sustainable Development Goals (SDGs) began when the UN member states, including Indonesia, agreed on the Outcome Document of SDGs on August 2nd, 2016. This document contains declarations, objectives, targets and suggested ways for the implementation of SDGs up to 2030. This document is a new global development framework replacing the Millennium Development Goals (MDGs) ending in 2015, with 17 goals and 169 targets [3].

Some of the direct contributing factors of maternal deaths in labour in Indonesia are still dominated by bleeding (lochia), eclampsia and infections, while the indirect factors causing maternal deaths are due to the lateness of getting medical treatment. This is all related to access factors,

including socio-cultural, educational, and economic. Risk factors for maternal mortality include being too old to be pregnant (over 35), too young to get pregnant (pregnant under 20 years of age), too many children (over 4) and having children too close together (birth spacing less than 2 years).

II. PURPOSE

Maternal mortality is one indicator of the welfare of a nation, therefore based on Article 12 of Law Number 23 2014 on the Regional Government, it is stipulated that health affairs are a mandatory business related to the basic services of the Government, Provincial Government and Regency/Municipal Government. These governmental structures have the duty and responsibility to fulfil the right to health services, in particular women's rights and reproductive health services. The duties and responsibilities of the government in fulfilling the right to health services is in accordance with Article 28 I Paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

Good reproductive health services are one of the government's efforts to meet gender equality and justice. This is because reproductive health services are one of the goals of the 5 SES in SGDs: ensuring gender equality and empowering all women. Indonesia, as a member of the United Nations, should use the sustainable development objectives in the SGDs (2016-2030) in the implementation of Indonesia's development and the Medium Term Development Plan.

Health advocates are using human rights mechanisms to ensure that governments honour their legal commitments to ensure access to services that are essential for reproductive health [4]. As stated above, it is necessary to review the policy instruments undertaken by the government and local governments in fulfilling women's rights and reproductive health services.

This paper aims to determine the government's efforts in fulfilling the right to health services, especially the right to reproductive health services. This paper uses a legal approach, namely by analysing the rules about the reproductive health services and legal reforms in the implementation of policies to improve the reproductive health services in ensuring gender equality and women's empowerment.

The instrument of government policy in performing reproductive health services is done through acts of government, both in real action and legal action. Therefore the government's responsibility in the implementation of the policy instrument, whether it is set forth in legislation, licensing, guidance, supervision and law enforcement, should be analysed.

In accordance with the legal function of improving compliance, the effort to improve reproductive health services as the realisation of the duties and responsibilities of the state in fulfilling the right of everyone to obtain equal opportunities and benefits to achieve equality and justice is as contained in

Article 28 H Paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Based on the aforementioned background, the rising issues in the research can be formulated as follows:

1. What is the state's responsibility in fulfilling the right to reproductive health services?
2. Are the law enforcement efforts on reproductive health services undertaken by persons adversely affected by reproductive health services?

III. METHODS

Reproductive Health is part of Human Rights

Reproductive health is one of the rights to health inherent in women because of its nature. The right to health is a part of human rights, particularly economic, social and cultural rights. In essence, human rights exist and are attached to the human self because of humanity, therefore human rights are fundamental. In Article 1 of the Universal Declaration of Human Rights, it affirms that all persons are born with freedom and have the same dignity and rights. Furthermore, Article 2 states that "the rights and freedoms of the declaration shall be the right of any person without exception, whether by sex, nation, colour, religion, politics, other views, national or community origin, property, birth or position other".

The adoption of the Universal Declaration of Human Rights by the United Nations on December 10th 1948, became a milestone in the recognition of human rights followed by other agreements, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1966. The right to health includes the right to a healthy life and work, the right to health care, and special attention was given to maternal and child health as contained in Article 25 of the Universal Declaration of Human Rights and Article 12 Paragraph 1 of the International Covenant on Economic, Social and Cultural Rights.

In its development, the meaning of health becomes widespread, because it covers the quality of life as marked by the adoption of the Alma Ata Declaration. The Declaration emphasises that basic health services are the primary strategy for the achievement of health for all, as a form of human rights manifestation. The problem of reproduction cannot be separated from sexuality and the human body. Sexuality is not merely an instinct or a biological necessity, but it also includes forms of social or relational interaction. Many women are not aware of their rights, because reproductive issues are often taboo to talk about. There is a presumption of reproduction and the health associated it as being regarded as domestic territory.

Health development thus aims to enhance health status because it is part of the fulfilment of human rights. One area of health that should get attention is reproductive health for

women. The development of human rights and the current tendency among others is the fact that there is often discrimination or the domination of a group of people against other groups, especially those related to the sexes that cause oppression and arbitrariness to the victim, who is often a woman. It is on this basis that there are efforts and struggles to do with gender-based efforts to deal with situations that are unfavourable to women, including reproductive health.

The definition of reproductive health in general is a state of physical, mental, social well-being in all matters relating to reproductive systems, functions and processes. At the Conference, the 179 countries in attendance agreed that the population and the control of the delivery assistance policy by shamans are connected and that the empowerment of women to meet the population's need for education and health, including reproductive health, is essential for individual progress and developmental balance. The conference was crucial in establishing a clear international framework on health and reproductive rights.

The regulation of the right to health covering international reproduction rights is contained in Article 25 of the Universal Declaration of Human Rights. It states that:

1. Everyone has the right to an adequate standard of living for the health and well-being of himself and his family, including the right to food, clothing, shelter, and health services, necessary social services, and the right to security at the time of unemployment, sickness, disability, abandonment by his or her spouse, being elderly or other circumstances resulting in a decline in the level of life that occurs outside of his or her power.
2. Mother and child are entitled to special attention and assistance. All children, whether born inside or outside of marriage, should enjoy the same social protection.

The spirit of respect for human rights, including the right to health as set forth in the Universal Declaration of Human Rights, is further elaborated on in the Economic, Social and Cultural Rights Convention, Article 12 Paragraph (1), namely stating that the participating countries of the Convention recognise the right of each to enjoy the highest attainable standard of physical and mental health, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.

In the national context, the right to health has been set forth in the constitution. Some of the prevailing laws and regulations governing human rights include:

- Articles 27, 28, 29 and 31 of the Constitution of the Republic of Indonesia 1945;
- Tap No. XVII / MPR / 1998 on Human Rights;
- Act Number 7 of the 1984 on the ratification of the Convention on the Elimination of All Forms of Discrimination against Women;
- Act Number 5 of the 1998 on the Ratification of the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment;

- Act Number 9 of the 1998 on Freedom of Expression of Public Opinion;
- Act Number 39 of the 1999 regarding Human Rights;
- Act Number 26 of the 2000 regarding Human Rights Court.
- Presidential Decree No. 50/1993 on the National Commission on Human Rights;
- Presidential Decree No. 181/1998 on the National Commission on Violence Against Women;
- Presidential Decree No. 129/1998 on the Indonesian National Plan of Action on Human Rights;

Article 12 of the Convention on Economic, Social and Cultural Rights describes the steps to be taken to achieve the highest standards of achieving physical and mental health:

- Provision for reducing childbirth deaths and the development of healthy children;
- Enhancing all aspects of environmental and industrial health;
- The prevention, care and control of all endemic infectious diseases, occupational diseases and other diseases;
- The creation of conditions that ensure the existence of all medical care when illness arises.

The basics of the Government's obligations on reproductive health rights comes from 3 obligations in human rights, namely the obligation to protect, to respect and to fulfil. Act Number 36 of the 2009 on Health regulates the various efforts that are the responsibility of the government to realise the optimal health degree. In general, Article 10 states that to realise the optimal health status for the community, health efforts should be conducted with a comprehensive, integrated and sustainable promotive, preventive, curative and rehabilitative approach.

The duty and responsibility of the state to fulfil Human Rights, according to Friedman, is the duty of a country, where the tasks is classified as follows [5]:

- State as provider of social rights of society (provider)
- State as a regulator of social life (regulator)
- State as an agent in charge of advancing the community (entrepreneur);
- The State as an impartial referee of anybody in the event of a dispute (umpire)

In fulfilling the government's responsibility, it includes the following acts of government:

- The preparation of technical law products or local legal products as a source of legitimacy for measures to reduce maternal mortality and/or community empowerment in support of government policies in fulfilling the right to reproduction;
- Providing equitable and qualified reproductive health service facilities and infrastructure;
- Providing an adequate budget;

- Education of the community, especially the family, associated with safe reproductive acts;
- The management and supervision of reproductive health services conducted by health personnel and health service facilities.
- The law enforcement of reproductive health services.

Law Enforcement Against Reproductive Health Services

Reproductive Health Services, in accordance with Article 23 of the Health Act, shall be conducted by qualified and skilled health workers with evidence of having a Registry Certificate (STR) and Practice License (SIP) in health care facilities. Health services are part of executed health efforts, where health efforts are any activity and/or a series of activities that are conducted in an integrated and sustainable manner to maintain and improve the public health status in the form of disease prevention, health promotion, disease treatment, and health restoration by the government and/or society [6]. The importance of health services in health endeavours and the fulfilment of the rights of everyone should be regulated in the legal structure in accordance with the existing legal system.

Law enforcement is very dominant in legal compliance, because in essence there is no benefit for government officials who have the power to regulate without them having the authority to conduct supervision and the application of sanctions [7]. Law enforcement in the implementation of health services can be done through administrative law enforcement, and criminal and dispute settlement.

The enforcement of administrative law in reproductive health services has a scope that includes:

1. The enforcement of preventive administrative law
2. The enforcement of administrative law that is repressive

Administrative law enforcement that is preventive can be done by the authorised government by conducting supervision on the implementation of permits, either permission for the health workers or the operational facility license of the health service itself. Supervision is a preventive measure to compel compliance within the existing provisions. The enforcement of administrative law that is repressive is law enforcement conducted by the Government and local government in accordance with the authority to apply sanctions against violations of administrative law norms. Thus, according to the authority of administrative law, enforcement in relation to reproductive health services is divided into:

- The Central Government through the Ministry of Health shall supervise and apply administrative sanctions for the health facilities whose licenses are issued by the health ministry. For example, reproductive health services in Class A Hospitals
- The provincial government through the Provincial Health Office shall supervise and apply administrative sanctions to the health service facilities whose license is issued by

the Provincial Government such as the reproduction health services at a Class B Hospital

- The district / municipal government through the District Health Office shall supervise and apply sanctions to health facilities whose licenses are issued by the District Health Office, such as reproductive health services in Class C or D Hospitals; joint clinics; the independent practices of specialist doctors, independent medical practices, and independent midwife practices.

While the type of administrative sanction that can be applied is a sanction that aims to stop the violation and/or to restore the original state of the setting, such as in the form of a written/oral warning, government administration in the form of the temporary suspension of the health service, the freezing of permits and/or the revocation of the license, either the operational license or license practice.

In addition to administrative law enforcement, other applicable law enforcement includes:

- Article 190; the application of criminal sanctions on health-care facilities which do not provide first aid to patients who are in an emergency;
- Article 194; the application of criminal sanctions to any person intentionally performing an abortion that is not in accordance with the provisions
- Article 200; the application of criminal sanctions on any person who deliberately impedes exclusive breastfeeding programs

While law enforcement through dispute settlement is law enforcement conducted by the involved parties, between patient and health service facility or implementer of reproductive health, who in doing action of reproduction health service has done harm to patient by reason of violation of law. The violation of the law in question is a violation of the law against the law, hospital by law and/or treaty that is therapeutic. The settlement of disputes can be done through litigation channels, judicial channels or through non-litigation methods such as deliberation, mediation or arbitration.

CONCLUSION

1. Reproduction health services are a part of health services, so the government's responsibility in fulfilling the right to health services is the responsibility of the government to fulfil human rights as stated in Article 28 I Paragraph (4) of the 1945 Constitution of the Republic of Indonesia and the laws and regulations in the field of health and human rights.
2. Violations of reproductive health services constitute a violation of human rights, so violations of the right to reproductive health services may be subject to law enforcement which includes criminal law enforcement, administrative law and dispute settlements, health care facilities, health personnel, and services offered to persons preventing reproductive health services.

SUGGESTIONS:

Reproductive health services are part of the health services that are the substance of human rights, so that their implementation becomes the responsibility of the state and society as stated in the 1945 Constitution of the Republic of Indonesia. Thus, optimising the reproductive health services ensures a healthy life and encourages the welfare of all people of all ages.

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