

JURIDICAL REVIEW OF REFUSAL OF MEDICAL TREATMENT AGAINST HIV/AIDS PATIENTS BY DENTISTS

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ABSTRACT

Bad stigma and discrimination are still attached tightly to People Living with HIV/AIDS (PLWHA) so that there are still many dentists who are afraid to treat PLWHA patients and end up refusing them to be treated. The high risk is accompanied by limited tools / materials for self-protection as well as sterilization and lack of in-depth knowledge about HIV / AIDS are the reasons why many dentists reject PLWHA patients so that dentists prefer to refuse treatment or refer patients to other dentists who are more competent. From the patient's point of view, there must be a sense of discrimination and it makes the patients want to fight for his human rights. Therefore, author conducted a study to examine the rule of law governing the refusal of dentists' medical treatment against PLWHA and how the principle of justice for these patients. By conducting normative juridical research and using secondary data with a literature approach, several regulations were obtained that regulate dentists' actions to work according to the rules and be fair to all patients, especially PLWHA patients. These matters are listed mainly in the dental code of ethics and laws and regulations on medical practice and human rights, as well as Permenkes RI No.21 Tahun 2013 tentang penanggulangan HIV/AIDS that is deliberately made to safeguard the rights of PLWHA patients and so that they can be free from stigma and discrimination. It states that dentists must work according to their competence and be fair or do not discriminate against patients, especially to the point of discriminating against and then rejecting patients. The rights of PLWHA patients are also the same as those of other Indonesian citizens, namely the right to be treated without discrimination and the right to obtain health services.

Key words: HIV/AIDS, Discrimination, Dentist, Refusal, Regulation

INTRODUCTION

HIV/AIDS is one of the infectious diseases that require special treatment. AIDS can be defined as a collection of symptoms or diseases caused by decreased immunity due to infection by the HIV virus (Human Immunodeficiency Virus). The spread of HIV/AIDS mostly occurs due to sexual intercourse with people living with HIV/AIDS (PLWHA) who do not wear condoms, blood transfusions that are not screened for HIV, syringes used in turns (such as for drug users) and through breastfeeding by PLWHA to their babies. Another problem that exists also because of many of PLWHA do not realize that they have HIV / AIDS because there are no specific signs, symptoms or specific characteristics that are typical in the physical ODHA and there are also no typical health complaints, so that many are undetectable and the cases are getting more and more.

Unlike other diseases, bad stigma and discrimination are closely attached to PLWHA. All national and local regulations relating to HIV prohibit the practice of stigma and discrimination against PLWHA. Even Peraturan Menteri Kesehatan Nomor 21 Tahun 2013 tentang Penanggulangan HIV dan AIDS was created with the aim of eliminating discrimination against PLWHA by providing correct information about HIV and empowering people with HIV. Unfortunately, the practice of stigma and discrimination is still often experienced by PLWHA. Regulations that prohibit stigma and discrimination do not guarantee PLWHA avoid stigma and discrimination.

Prior to the COVID-19 pandemic, HIV/AIDS was also a disease that attracted the attention of dentists. Many stigmas and negative thoughts still occur towards PLWHA so there are still dentists who are afraid to treat PLWHA patients and end up refusing them to be treated. In fact, this is not only the case for dentists, hospitals, general practitioners, nurses and midwives are also still many who have a negative stigma against PLWHA and end up rejecting patients.

High risk accompanied by limited tools / materials of self-protection and sterilization and lack of in-depth knowledge about HIV / AIDS also makes many dentists reject PLWHA patients so that dentists prefer to refuse treatment or refer patients to other more competent dentists. Whereas if all dentists learn how to properly handle HIV/AIDS patients, dentists can become HIV/AIDS counsellors and play a very important role in knowing the manifestations of HIV/AIDS in the oral cavity.

Previous research results in several places also showed that there were still health service providers or providers who acted discriminatively against PLWHA. For example, the results of a study in Banda Aceh showed that the discrimination of health workers against PLWHA was still high, where knowledge of HIV transmission and prevention was a predictor factor for the emergence of discrimination among health workers against PLWHA.

The results of research conducted by Merati and friends also showed forms of discrimination against PLWHA in health services in the form of refusal to provide health services to PLWHA, different treatment of PLWHA, exposing the patient's HIV status to other parties, and isolating PLWHA patients. Limited facilities for HIV and AIDS health services are often used as a strategy to cover up discrimination by health workers against PLWHA. For this reason, health workers often advise PLWHA to look for other

health services so that they can avoid their duties. This is a form of response of health workers to their unpreparedness to face HIV and AIDS patients.

Judging from the patient's point of view, there must be a sense of being discriminated against by the surrounding environment. In this case, it concerns the human rights fought by patients. Dentists who refuse PLWHA patients who are proven to have violated the Indonesian Dental Code of Ethics, Medical Discipline and Health Law in Indonesia will receive sanctions determined by the respective authorities in accordance with the applicable regulations.

Based on the description above, author is interested in conducting a study entitled "Juridical Review of Refusal of Medical Treatment Against HIV/AIDS Patients by Dentists". The purpose of this study were to analyze how the legal rules regarding the refusal of medical action against HIV / AIDS patients by dentists, and to analyze how the principle of justice for HIV / AIDS patients for refusing medical action by dentists.

RESEARCH METHODS

The type of research used in this study is normative legal research. The approach used is a normative juridical approach, namely by collecting various kinds of laws and regulations, theories and literatures that are closely related to the problem to be examined. The objects studied and analysed in this study are the legal norms contained in the laws and regulations. This research is also explanatory in the form of evaluative from a combination of health law research and legal principles, and aims to find solutions to problems.

In normative legal research, the required data is secondary data, namely data obtained through library research by collecting primary legal materials, secondary legal materials and tertiary legal materials.

The data collection techniques used in this study are obtained through the of literature approach or document study, namely by examining the sources of legal materials mentioned above in relation to the problems studied by reading, reviewing and studying the materials of literature. For data analysis techniques used in this study is non statistical. This non-statistical analysis was carried out using qualitative data analysis techniques. So, this research is not a quantitative study that using a population / sample and does not require computerized data processing.

LEGAL ARRANGEMENTS REGARDING THE DISCLAIMER OF MEDICAL TREATMENT AGAINST HIV/AIDS PATIENTS BY DENTISTS

The increasing legal awareness of society nowadays has an impact on dentists who practice. The negative impact is that more and more dentists will be caught up in allegations or lawsuits. To anticipate this, it is deemed necessary for a dentist who runs private practices to increase knowledge and understanding of legal aspects. Dentists must work in accordance with professional standards and implement a code of ethics in order to avoid medical disputes. In addition, it is expected that dentists who carry out private practices understand about the legal aspects in Indonesia.

Behind all that, there are still many dentists who refuse dental care to PLWHA patients, even though this is against the prevailing legal aspects. There are still many health care facilities that are still reluctant to handle PLWHA patients, especially private dental practices. Many consider cases of HIV and AIDS to be very complex and problematic so that medical workers still afraid to treat PLWHA patients, on the grounds that HIV / AIDS is a deadly disease that attacks the resilience of the body and there is still no drug that can actually kill this virus so that when treated will pose too great a risk for them. Stigmatization and discrimination in HIV/AIDS patients should be eliminated if professionals know more about how to transmit and prevent the disease.

This refusal is considered illogical since other patients carrying undetectable diseases have received treatment in practice or clinics every day. Occupational risks such as contracting HIV/AIDS infectious diseases and other infectious diseases due to the lack of awareness of health workers themselves and the low quality of sterilization implementation also resulted in a high prevalence of the spread of infectious diseases. Many cases of refusal of dental care performed by dentists against PLWHA in dental practice on the grounds of limited facilities and willingness of tools / materials self-protection and sterilization. These limitations should not be used as an excuse not to provide health services for HIV/AIDS patients, but rather as a reference to maximize the performance of services.

Every dentist is expected to work professionally according to the rules and regulations that have been applied because if a dentist discriminates then rejects PLWHA, it means he has violated the existing rules / legal norms. The following are the legal rules governing dentist behavior in order to act fairly and not to discriminate so that rejection of patients can be avoided:

- A. Undang-Undang Dasar Republik Indonesia Tahun 1945
- B. Surat Keputusan Nomor: SKEP/034/PB PDGI/V/2008 Tentang Kode Etik Kedokteran Gigi Indonesia
- C. Undang-Undang Nomor 29 tahun 2004 Tentang Praktik Kedokteran
- D. Undang-Undang Nomor 36 Tahun 2014 tentang Tenaga Kesehatan
- E. Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan
- F. Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen
- G. Undang-Undang Nomor 44 Tahun 2009 tentang Rumah Sakit
- H. Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia
- I. Permenkes RI Nomor 21 Tahun 2013 Tentang Penanggulangan HIV/AIDS

From the regulations mentioned above, most of them the obligation of a dentist to respect and be fair to all patients, as well as provide health services to patients in need according to their abilities without discriminating against patients, especially listed in:

1. The dental code of ethics (Surat Keputusan Nomor: SKEP/034/PB PDGI/V/2008 Tentang Kode Etik Kedokteran Gigi Indonesia)
 - a. Article 1: Dentists in Indonesia are obliged to live up to, obey and practice the Oath / Promise of Indonesian Dentists and the Indonesian Dental Code of Ethics
 - b. Article 1 Paragraph (1): In practicing the Oath / Promise of Dentistry and Ethics of Dentistry Indonesia, Dentists is obliged to respect the right of patients in determining their fate and keeping their secrets, prioritizing the interests of patients first, protecting patients from harm, treating others fairly, always honest with patients, society, colleagues and other professions, in accordance with the noble dignity of the Dentist's profession.
 - c. Article 12: Dentists in Indonesia are obliged to prioritize the interests of patients.
 - d. Article 12 Paragraph 2: Dentists in Indonesia are obliged to provide emergency assistance within the limits of their ability as a humanitarian task, unless they believe that someone else is more capable of doing it.
 - e. Article 12 Paragraph 3: Dentists in Indonesia are obliged to prioritize patients who come in an emergency situation.
 - f. Article 13: Dentists in Indonesia are obliged to treat patients fairly.
 - g. Article 13 Paragraph 1: Dentists in Indonesia may not refuse patients who come to their place of practice based on considerations of socio-economic status, race, religion, skin color, gender, nationality, certain diseases and disorders.
 - h. Article 21: Dentists in Indonesia must actively participate in the development of ethics, science and technology, especially in the field of dentistry, either independently or organized by professional organizations.
2. Medical discipline (Surat Keputusan Nomor: SKEP/034/PB PDGI/V/2008 Tentang Kode Etik Kedokteran Gigi Indonesia)
 - a. Article 2: Medical practice is implemented based on Pancasila and based on scientific values, benefits, justice, humanity, balance, as well as patient's protection and safety.
 - b. Article 51: In carrying out medical practice, a doctor or dentist has the following obligations:
 - i. provide medical services in accordance with professional standards and standards of operational procedures and medical needs of patients;
 - ii. refer the patient to another doctor or dentist who has better skills or abilities, if unable to perform an examination or treatment;
 - iii. keep everything he knows about the patient, even after the patient has passed away;
 - iv. perform emergency assistance on the basis of humanity, unless he is sure that someone else is on duty and is able to do so; and
 - v. increase knowledge and follow the development of medical science or dentistry.
 - c. Article 52: Patients, in receiving services in medical practice, have the right:
 - i. to obtain a complete explanation of medical actions as referred to in Article 45 paragraph (3);
 - ii. ask for the opinion of another doctor or dentist;
 - iii. get services according to medical needs
 - iv. refuse medical treatment; and
 - v. obtain the contents of medical records.
 - d. Article 79: Shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp 50,000,000.00 (fifty million rupiah), any doctor or dentist who: (c). intentionally does not fulfill the obligations as referred to in Article 51 letter a, letter b, letter c, letter d, or letter e.
3. Permenkes RI Nomor 21 Tahun 2013 Tentang Penanggulangan HIV/AIDS
 - a. Article 3: The HIV and AIDS Prevention Regulation aims at:
 - i. reduce to eliminate new HIV infections;
 - ii. reduce to eliminate deaths caused by AIDS-related conditions;
 - iii. eliminate discrimination against PLWHA;
 - iv. improve the quality of life of PLWHA; and
 - v. reduce the socio-economic impact of HIV and AIDS on individuals, families and communities.
 - b. Article 30 paragraph (1): Every health care facility is prohibited from refusing treatment and care for PLWHA.
 - c. Article 30 paragraph (2): In the event that the health care facility as referred to in paragraph (1) is unable to provide treatment and care, it is obligatory to refer PLWHA to other capable health care facilities or to ARV referral hospitals.
 - d. Article 41 paragraph (2): Every health care facility is obliged to provide health services to PLWHA in accordance with its capabilities.
 - e. Article 41 paragraph (3): Every primary health care facility is obliged to be able to carry out promotional, preventive, counseling, early detection and refer cases that require referral.
 - f. Article 41 paragraph (4): Every hospital at least class C is obliged to be able to diagnose, treat and treat PLWHA in accordance with the provisions in the referral system.
 - g. Article 41 paragraph (5): Primary health care facilities and class D hospitals can carry out diagnosis, treatment and care for PLWHA according to their abilities and referral system.

Related to violations of dentist profession ethics, referring to the provisions of the Indonesian Medical Code of Ethics (KODEKI) as determined by the Indonesian Dentists Association (PDGI). When a dentist is suspected of having committed an ethical violation, the institution authorized to resolve the alleged violation is the Honorary Dental Ethics Council (MKEKG), which is an autonomous body from the Indonesian Dentists Association.

Another form of violation is a violation of the discipline of doctors and dentists. When a dentist is suspected of having violated professional discipline, the dispute will be resolved by the Indonesian Medical Discipline Honorary Council (MKDKI), which is an autonomous institution from the Indonesian Medical Council which is independent in carrying out its duties.

PRINCIPLES OF JUSTICE FOR HIV/AIDS PATIENTS FOR THE REJECTION OF MEDICAL TREATMENT CONDUCTED BY DENTISTS

Stigma (bad label) often leads to discrimination and in turn encourages the emergence of human rights violations for people with HIV/AIDS and their families. Discrimination occurs when a negative view encourages a person or institution to treat someone unfairly based on their preconceptions of a person's HIV/AIDS status.

Two fundamental human rights related to HIV/AIDS are: the right to health and the right to be free from discrimination. Compared to the right to health, the way out of the problem of discrimination against people with HIV / AIDS is much more complex and difficult.

Health care efforts are an effort to maintain health as the most important part of life. This also applies to people with HIV/AIDS. But unfortunately, discrimination still occurs a lot in health care centers. There are still medical officers who tend to be discriminatory against PLWHA. Many cases in PLWHA hospitals do not receive good health services even until treatment is refused. The hospital's refusal was carried out with various arguments, such as the limitations of health facilities and other impressive reasons do not want to do treatment.

Whereas obtaining health services is part of the basic rights that everyone has. Every patient with HIV/AIDS is also entitled to access health care. Every health care facility is prohibited from refusing PLWHA treatment and care. Every health service facility is obliged to provide health services to patients with HIV/AIDS.

The protection of human rights is one of the characteristics of a state of law. Law as a means of social supervision is expected to provide protection for the rights of people with HIV / AIDS, with the values of non-discrimination, tolerance and empathy. However, until now there is still a gap between *das sein* and *das sollen* in protecting the rights of people with HIV / AIDS. The disparity can be seen from the discriminatory treatment of PLWHA. Weaknesses in providing protection for PLWHA, has an impact on the increase of PLWHA.

Discriminatory actions that occur in health services are a problem faced in the provision of health services. Limited information and knowledge about HIV and AIDS cause excessive fear of contracting the HIV virus among health workers and often leads to discrimination and irrationality towards PLWHA.

In a study conducted by Miralda et al., an informant said that the treatment for PLWHA patients included special tools and sterilization. This is in accordance with the answer of the triangulation informant who said that the equipment used by PLWHA patients is usually isolated on the grounds that a separate sterilization is needed, which must be soaked with 0.5% chlorine solution for 10 minutes before going into general sterilization. Specific sterilization also applies to equipment in dentistry, and HIV patients who are going to perform dental procedures must include laboratory results stating that the patient is HIV positive, if the patient takes an HIV test outside the hospital, he must bring laboratory evidence or do another HIV test at the hospital, this is for post-exposure action in the event of a work accident. Meanwhile, one of the hospital triangulation informants said that at the dental clinic, the tools for extracting teeth for HIV patients had been specially provided. Health workers are sometimes afraid to treat patients with HIV and are too cautious about these patients, while other patients are just normal.

Like other Indonesian citizens, PLWHA is legally protected by laws and regulations. PLWHA is protected by law, their rights are protected by the state, and their rights do not differ in the slightest from other members of society.

The right of PLWHA is guaranteed by the state to be free from discrimination and to get health services. Broadly speaking, the following justices in terms of the law against ODHA listed in the:

- A. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- B. Undang-Undang Nomor 39 tahun 1999 tentang Hak Asasi Manusia
- C. Undang-Undang Nomor 36 tahun 2009 tentang Kesehatan
- D. Undang-Undang Nomor 44 Tahun 2009 tentang Rumah Sakit
- E. Undang-Undang Nomor 29 tahun 2004 tentang Praktik Kedokteran
- F. Permenkes RI Nomor 21 Tahun 2013 Tentang Penanggulangan HIV/AIDS
- G. In the scope of legislation outside the Law, the issue of AIDS is also considered an important issue, as evidenced by the issuance of Peraturan Pemerintah No.75 tahun 2006 tentang Komisi Penanggulangan AIDS Nasional.

In Indonesia itself the legal protection for PLWHA is based on Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia, in article 3 paragraph (2) which states that everyone has the right to recognition, guarantees, protection and fair legal treatment and get legal certainty and equal treatment before the law, in Article 3 paragraph (3) that everyone has the right to the protection of human rights and basic human freedoms , without discrimination and in Article 9 paragraph (1) of the Law on Human Rights is also emphasized that everyone has the right to live, maintain life and improve his standard of life, as well as article 9 paragraph (3) which is also emphasizes that has the right to a good and healthy environment.

In addition, Permenkes RI Nomor 21 Tahun 2013 Tentang Penanggulangan HIV/AIDS was made to protect the rights of PLWHA, especially to be free from discrimination and the right to access health services.

In relation to the actions of refusing to provide health services for PLWHA by dentists, in terms of ethics, discipline and law are as follows:

A. Medical Ethics

If the dentist is proven to have violated ethics in refusing a patient (especially PLWHA), there will be a verbal warning, written warning, and withdrawal of license to practice recommendations so that the license to practice will automatically be invalid.

B. Medical Discipline

If the dentist is proven to have violated ethics in refusing a patient (especially PLWHA), there will be a written warning, temporary or permanent registration certificate revocation; and or the obligation to attend education or training. It will depend on the severity of the disciplinary violation committed by the dentist, the existing evidence and the final MKDKI decision.

C. Medical Law

Dentists who reject PLWHA patients and are proven to have violated Undang-Undang Nomor 29 tahun 2004 tentang Praktik Kedokteran, especially Article 51 which explains the obligations of dentists in carrying out dental practice, especially point f (providing medical services in accordance with professional standards and standard operating procedures as well as patient medical needs), then in Article 79 states that there is a penalty of imprisonment a maximum of 1 (one) year or a maximum fine of Rp.50,000,000.00 (fifty million rupiah) for every doctor or dentist who deliberately fails to fulfill the obligations as referred to in Article 51 letter a, letter b, letter c, letter d, or letter e.

In addition, if the dentist is proven to have violated Undang-Undang Nomor 36 Tahun 2014 tentang Tenaga Kesehatan, namely in Article 58 paragraph (1) concerning the obligations of dentists in point (a), namely providing health services in accordance with Professional Standards, Professional Service Standards, Standard Operating Procedures, professional ethics and health needs of Health Service Recipients, as well as Article 60 regarding the responsibilities of dentists, there are administrative sanctions as stated in Article 82 paragraph (1), namely in the form of verbal warning, written warning, administrative fines, and / or revocation of license.

CONCLUSION

Based on the results of the research conducted, it can be concluded that in the implementation of dental practices in Indonesia, there are rules of law that regulate always working in accordance with the code of ethics and professional standards. Dentist who discriminates against PLWHA patients and then refuses to provide dental and oral health services has violated the Code of Dental Ethics listed in Surat Keputusan No. SKEP/034/PB PDGI/2008, the discipline of dentistry in Undang-Undang Nomor 29 tahun 2004 tentang Praktik Kedokteran, and the Law applicable in the regulation of legislation, as well as Permenkes RI Nomor 21 Tahun 2013 tentang Penanggulangan HIV/AIDS.

In Indonesia, PLWHA, like other Indonesian citizens, is also legally protected by laws and other legal regulations. The right of PLWHA is guaranteed by the state to be free from discrimination and to get health services. Justice for PLWHA is guaranteed, especially in Undang-Undang Nomor 39 tahun 1999 tentang Hak Asasi Manusia and Permenkes RI Nomor 21 Tahun 2013 tentang Penanggulangan HIV/AIDS.

Dentists who are proven to refuse patients and violate applicable rules may be penalized for violating the ethics of dentistry, medical discipline and medical law.

Therefore, it is expected that the dentist always works in accordance with professional standards and carry out their work in accordance with the code of ethics, in addition it is expected that the dentist understands the legal aspects applicable in Indonesia and always carry out health service activities in accordance with professional ethics, disciplines and applicable laws without discriminating against patients. Then do not be too afraid of PLWHA, but learn and understand more about how to prevent it in carrying out health service activities, especially the universal precautions that should be assigned not only to PLWHA patients, but to all patients.

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