

Detention of Incapacitated Patients by Hospitals as a Violation of Constitutional Rights in Health Services

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ABSTRACT

Detention of patients in hospitals for inability to pay is a practice that is contrary to the principles of human rights and social justice. This practice not only violates the right to individual liberty as stipulated in Article 28G paragraph (1) and Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, but also contradicts the mandate of Article 189 paragraph (1) letter f of Law Number 17 of 2023 concerning Health which requires hospitals to carry out social functions by providing services to underprivileged patients. This research aims to examine the applicable legal arrangements, evaluate the implementation of the social function of hospitals, and formulate fair and proportionate legal reforms in the face of the reality of patient detention. Using empirical juridical approaches and qualitative methods, data were collected through literature studies and interviews with relevant parties. The results of the study show that there is an imbalance between the hospital's obligation to carry out social functions and the hospital's institutional needs to cover operational costs. Unclear financing mechanisms for underprivileged patients, weak coordination between government agencies, and suboptimal regulatory supervision lead to violations of patients' rights. Therefore, comprehensive legal reform is needed by emphasizing the state's obligation to ensure health services without discrimination, as well as developing a financing mechanism that ensures the sustainability of hospitals. The reformulation of legal norms in the Health Law and its derivative apparatus must be based on the principles of social justice and the state's responsibility for the right to health, so that the law truly protects the basic rights of citizens while maintaining the balance of the health service system

INTRODUCTION

Health is a condition that encompasses physical, mental, spiritual, and social well-being, enabling individuals to live productively in both social and economic aspects. A person can be considered healthy if their physical and spiritual conditions support optimal functioning in daily social and economic activities (Maranjaya, 2021). Every individual, without exception, has the right to access *health services (pelayanan kesehatan)* (Yustina et al., 2020). The fulfilment of this right contributes to the creation of a healthy and prosperous community and environment (Kambu, 2021).

The right to health care is a fundamental human right and is *non-derogable*—it cannot be reduced under any circumstances (Matompo, 2014). This right is explicitly recognized in Article 28H, paragraph (1), of the 1945 Constitution of the Republic of Indonesia, which states that everyone has the right to obtain *health services*. This constitutional guarantee affirms that the state holds the primary responsibility for organizing a *health service system (sistem*

pelayanan kesehatan) that is just, equitable, and accessible to all citizens without discrimination (Japar et al., 2024).

However, the implementation of the right to health services is often faced with paradoxical realities. One striking example of this is the practice of detaining patients by hospitals due to their inability to pay for treatment. Such a practice not only violates individual freedoms as guaranteed by the constitution but also reflects a systemic failure of the state in fulfilling its constitutional obligations. Detaining patients is a violation of personal liberty and highlights the state's ongoing inadequacy in safeguarding the rights of vulnerable groups in accessing *health services* (Pane et al., 2021).

R. Susilo stated that detaining or depriving individuals of their freedom may involve confinement, such as being locked in a house or room. Although this does not always mean complete immobility, being ordered to remain at home under supervision and having limited movement are also considered forms of detention.

Detaining patients for financial reasons can be classified as an unlawful deprivation of liberty, particularly when done without a legitimate legal basis. Moreover, inefficiencies in the healthcare financing system and poor coordination among institutions place hospitals in a dilemma between fulfilling their social function and maintaining operational sustainability. Administrative obstacles—such as errors in data recording and delays in *BPJS* (Social Security Administration Body) claims—further hinder underprivileged patients from receiving the care they need.

This practice of detaining patients is a systemic issue across various hospitals in Indonesia, including those managed by the government. It arises from the absence of an emergency financing mechanism and weak oversight of patients' rights. According to the view of *progressive law* (*hukum progresif*) as advocated by *Satjipto Rahardjo*, law should not merely serve as a tool of authority but should act as a means to provide substantive protection, especially for vulnerable groups (Lubis, 2024; Nurlaela et al., 2024).

Cases of detained patients due to financial inability are still frequently reported in Indonesia. For example, *Suharni* and *Santi* were detained at *Sofa Marwa Maternity Hospital*, South Jakarta, for nearly five months due to their inability to pay a delivery fee of Rp5,000,000.00 (five million rupiah). During this period, the hospital charged them Rp100,000 per day [9]. A similar incident occurred in Surabaya, where a mother and her newborn were "detained" at a maternity clinic in the Asemrowo area due to non-payment. The mother, *Siti Ayu*, was 23 years old at the time.

A more tragic case involved *Abdul Karim* and *Istiqomah*, whose three-day-old child died at *RSUD Waluyo Jati*. However, they were unable to bring the body home as they could not afford the hospital fees. Such events indicate a fundamental misunderstanding by some healthcare providers regarding the very essence and purpose of *health services*.

If hospitals fully embraced the principle of social function and recognized the state's duty to ensure access to healthcare, such detentions—especially of patients and deceased bodies—would be unthinkable. These incidents highlight the urgent need for policy reform and stronger supervisory mechanisms to uphold the community's constitutional right to *health services*. Consequently, there is a critical need for legal policy reformulation that not only reaffirms the state's obligation to provide healthcare but also establishes fair and sustainable financing mechanisms for underprivileged patients.

The objective of this research is to conduct a comprehensive analysis of the normative, implementative, and institutional dimensions related to the practice of detaining patients in hospitals, with a particular focus on indigent patients. Specifically, this study aims to examine the legal framework and implementation of the hospital's social function in these cases and to formulate a model of legal reform that aligns with the principles of social justice, human rights protection, and the constitutional guarantee of access to *health services*.

METHOD

The method used is *normative legal research* with a *statutory* and *analytical approach* Karwur (2024), aimed at assessing the conformity of practices in the field with constitutional principles and national health regulations. This research is grounded in a *progressive legal framework* that emphasizes the protection of the poor and the necessity of legal reform to ensure equal access to health services for all citizens.

Data analysis is conducted through *legal interpretation*, by comparing existing health policies and practices with constitutional principles and the *progressive legal framework*, identifying legal and institutional gaps, and proposing reforms to guarantee equitable access to *health services*, particularly for marginalized communities. This analytical approach enables an evaluation of how well current laws and regulations align with the broader goal of achieving *social justice* and equal health opportunities.

RESULTS AND DISCUSSION

A. Applicable Legal Arrangements Related to the Detention of Incapable Patients by Hospitals

Health is seen as a fundamental right of every individual, family, and community, so that the government has the responsibility to optimally regulate and protect public health. The state's responsibility is reflected in the provision of adequate health facilities and facilities that are easily accessible to the entire community.

Hospital health services are basically carried out in the form of treatment and care, which in its implementation is often related to doctors. Doctors and patients have a close relationship, namely in medical relations will be regulated by ethical and disciplinary rules and as a legal relationship will be regulated by legal rules. The relationship between the parties originates from a therapeutic agreement. Therapeutic Agreement is a legal relationship in the form of an agreement between a doctor and a patient in terms of health services (Mostert et al., 2015). Although the legal relationship between doctors and patients has been clearly regulated in therapeutic agreements, in practice, the fulfillment of the right to health services often does not run ideally, especially for underprivileged people who face various structural and economic obstacles (Ho et al., 2024).

The state plays an important role in implementing planned, comprehensive, and equitable health efforts, which contribute to the formation of Indonesian human resources, increasing the resilience, competitiveness of the nation, and national development [15]. This commitment should be reflected in the provision of fair and equal access to health services for all levels of society, without exception (Haryadi & Septarina, 2023). However, in reality, there is still a wide gap between principles and implementation in the field.

Inadequate services are often experienced by the underprivileged, as seen from various news reports in the mass media regarding the rejection of patients because they do not have BPJS membership or cannot afford medical fees. In some cases, patients who have finished undergoing medical treatment are not allowed to go home and experience administrative detention by the hospital because they have not paid their bills. This phenomenon not only reflects the weakness of the financing and supervision system, but also shows that access to health services is still discriminatory. The practice of detaining patients is a clear form of systemic failure to guarantee the right to health as a basic constitutional right of citizens (Aminda et al., 2024).

The detention of patients by hospitals due to inability to pay is a practice that is clearly contrary to the principles of law in Indonesia. The Constitution in Article 28G paragraph (1) and Article 28H paragraph (1) of the 1945 Constitution guarantees the right to self-protection and health services as a basic right of every citizen. This practice also contradicts Article 189 paragraph (1) letter f of Law Number 17 of 2023 concerning Health which mandates hospitals to carry out social functions, including providing services to poor patients and emergency services without down payment.

More than just an administrative violation, patient detention in this context contains elements of structural injustice. Patients who come from underprivileged groups are basically part of the citizens who should receive more protection by the state. The practice of detaining them in health facilities reflects inequality of treatment and economic-based discrimination, which directly contradicts the principles of social justice.

The provision is binding on all hospitals, both public and private, and emphasizes that there should be no discrimination on the basis of economic means in the provision of health services. In practice, detaining patients for failure to pay their medical bills not only violates human dignity, but can also qualify as a violation of law and human rights. The act of detaining patients after they have been discharged for reasons of arrears is a form of deprivation of liberty that cannot be justified by law or health care ethics (Afifah & Paruntu, 2015).

Furthermore, this practice is condemned by the international community. Research by Mostert et al. published in *The Lancet* called the detention of patients due to debt a violation of universal principles of human rights, considering that a person cannot be deprived of liberty simply because of economic inability (Patty & Prananingrum, 2021). The statement reinforces the view that the rights to liberty and health are fundamental and cannot be diminished by administrative or financial reasons. Therefore, normatively, the Indonesian legal system has provided a strict prohibition against this practice, whether through the constitution, health law, or ethical principles of medical care. The main problem is the weak implementation and enforcement of these norms at the health care institution level.

The absence of direct criminal sanctions against patient detention is also a legal loophole that is exploited by some hospitals. Although laws and regulations have affirmed the prohibition, the implementation of administrative sanctions such as revocation of operational licenses has not been optimal. On the other hand, complaint mechanisms by patients are often ineffective due to limited access, lack of legal education among the public, and fear of consequences when complaining to the hospital. Therefore, it is not enough just to have written regulations, there needs to be concrete steps in the form of strengthening

supervisory mechanisms, empowering patients through legal access, and simplifying the process of reporting violations by hospitals.

Recent legal regulations have also clarified the prohibition of such practices. Law No. 17 of 2023 on Health integrates the social functions of hospitals that were previously regulated separately. For example, Article 174 of Law No. 17 of 2023 on Health emphasizes that health facilities are prohibited from refusing patients and/or asking for advance payment in emergency situations. In addition, Article 189 letter f of Law No. 17 of 2023 on Health explicitly states that hospitals are obliged to carry out social functions, among others by providing services for poor patients, emergency services without down payments, free ambulances, and disaster victim assistance. This provision is in line with the mandate of the 1945 Constitution and confirms that detaining patients for reasons of cost is against the law. Thus, in terms of positive legal rules (the constitution and the 2023 Health Law), the practice of detaining poor patients by hospitals is prohibited and considered to violate the human rights and social obligations of hospitals.

B. Evaluation of Hospital Social Function Implementation and Fair Law Reform

The implementation of the hospital's social function in providing services to indigent patients in accordance with Article 189 paragraph (1) of Law Number 17 Year 2023 emphasizes the hospital's obligation to serve patients regardless of their financial ability (Mohamad, 2019). The social function of hospitals is an explicit command in national health law, which places hospitals not only as medical service institutions, but also as pillars of the fulfillment of citizens' basic right to health (Djamhari et al., 2020). This mandate is affirmed in Article 189 letter f of Law No. 17 of 2023 on Health, which orders hospitals to provide services to indigent patients, including emergency services without down payment and the provision of free ambulances (Dekrita, 2021). These provisions are intended to guarantee the principle of social justice and the principle of non-discrimination in access to health services. However, in practice, the implementation of the social function of hospitals is far from ideal. An evaluation of the conditions in the field shows a serious discrepancy between the normative spirit of the regulation and its institutional implementation (Rosidi et al., 2024).

An evaluation of the implementation of the social function of hospitals shows a serious imbalance between humanitarian service orientation and commercial pressures. In such a legal structure, the main objective of the company is to make a profit, which can create a value conflict with the non-profit principle of public service. Legal studies have mentioned that the overly profit-oriented legal form of hospitals tends to neglect the social dimension, making practices such as patient detention more likely to occur (Yuliyanti & Thabrany, 2018).

There was another case related to patient detention, where a mother who gave birth in Purwakarta was detained because she could not pay (Febriansyah, 2017). This includes patients who are covered by BPJS Health due to inability to pay dues and non BPJS patients due to lack of funds. This detention can also be referred to as hostage-taking which is explained in Article 451 of Law Number 1 of 2023 concerning the Criminal Code. Hostage-taking is a form of criminal offense that involves the deprivation of one's liberty. Different from kidnapping, hostage-taking is carried out with the aim of keeping the person being

held hostage in their place of residence or in another location, and this action is carried out using violence or the threat of violence.

This situation shows the importance of understanding and implementing clear rules regarding the rights of indigent patients. This loophole exists because despite regulations, monitoring and enforcement of patient detention has not been effective. Hospitals, which have a financial interest, sometimes use unethical practices, such as patient detention, to reduce costs. This practice violates the right to liberty and the right to fair health services in accordance with Article 28H of the 1945 Constitution and the Health Law.

Legal reform in the context of health policy reconstruction is needed to prevent the practice of detaining patients in hospitals due to inability to pay for treatment. From a human rights perspective, every individual has the right to obtain proper health services without discrimination, including from a financial perspective (Aribowo, n.d.).

The main problem in implementing the social function of hospitals is the financing system, especially in the National Health Insurance (JKN) scheme managed by BPJS Kesehatan. Delays in claim payments are a serious obstacle that has a direct impact on the availability of drugs, maintenance of medical equipment, and the welfare of health workers (Purwaningsih et al., 2024). Hospitals experience cash flow pressures, making it difficult to provide optimal services, especially to poor patients (Sari & SH, 2024). This condition creates a dilemma between performing social functions and maintaining operational sustainability. Without improvements to the claims payment system and emergency funding mechanisms, the social function of hospitals will be difficult to realize in reality.

Around 40% of BPJS claims are paid late, causing hospitals to experience operational difficulties. This has a serious impact on poor patients who most need fast and quality services (Wardhani, 2017). Unstable financial conditions have led some hospitals to take extreme measures such as delaying services or holding patients until bills are paid.

Legal reforms need to strengthen regulations that require hospitals to provide health services without economic discrimination, including emergency services without down payments, and prohibit denial or delay of services to poor patients, especially in emergencies. This is in line with the principle of social justice in the Preamble of the 1945 Constitution, which requires the state to create welfare for all people (Calundu, 2018).

On the other hand, legal reform must also take into account the financial interests of hospitals. Hospitals have large operational costs, which include the salaries of medical personnel, the cost of medicines, as well as the maintenance of facilities. Therefore, the legal system should enable hospitals to obtain sufficient resources to maintain the quality of services, while also fulfilling their social obligations. One solution to this is to develop a more inclusive and solidarity-based health financing system, such as through a broader and more effective national health insurance program. Within this framework, the government can provide subsidies or additional funds to hospitals to cover the cost of treating indigent patients.

Private hospitals that operate for profit should also be incentivized to serve the poor, for example through tax deductions or other fiscal incentives, which can reduce their financial burden in providing services to indigent patients. Law reform must take into account the diverse conditions of hospitals across Indonesia, and ensure that hospitals with limited resources can still provide adequate services to indigent patients.

For this reason, legal reform must be carried out in a comprehensive and sustainable manner, using structural and policy approaches. First, there is a need to revise regulations that clarify the legal form of hospitals and the limits of social functions that should not be violated, including a strict sanction system. Second, the government must ensure the availability of reserve funds to cover the financing of poor patients, so that hospitals are no longer the ones who bear the social burden unilaterally. Third, optimization and reform of BPJS Kesehatan management need to be carried out so that the claim mechanism runs quickly and transparently.

If these principles are upheld, then the law will not only be a normative tool, but also a social transformation tool capable of ensuring that the right to health services is truly guaranteed for every citizen, without economic discrimination and without violation of human dignity.

CONCLUSION

The detention of indigent patients by hospitals constitutes a violation of constitutional rights to freedom and access to *health services*, as enshrined in Articles 28G and 28H of the 1945 Constitution, as well as Article 189, paragraph (1), letter *f* of Law Number 17 of 2023 concerning *Health*. Despite the existence of clear legal prohibitions, this practice persists systemically across various regions due to weak enforcement, ineffective sanctions, and limited access to complaint mechanisms—illustrating a structural failure by the state to protect vulnerable populations within the *healthcare system*.

The *social function* of hospitals remains suboptimal, hindered by tensions between social responsibility and financial sustainability, and compounded by weaknesses in the *JKN* financing system and delays in *BPJS* claim payments. These factors create a dilemma for hospitals in balancing their obligation to serve the public with the need to maintain operational continuity.

Consequently, comprehensive and proportional legal reforms are essential. These include the implementation of stronger regulations, increased financial support from the state, incentives for private hospitals, and improvements to the *BPJS* management system to ensure equitable access to *healthcare* for all citizens—free from economic discrimination and violations of human dignity.

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