

Pilihan Hukum Penyelesaian Sengketa Pelayanan Kesehatan Melalui Pranata Adat Dan Pranata Hukum Formil

INTISARI

Rimawati¹, Laksono Trisnantoro² dan Sulastriyono³

Penelitian ini bertujuan untuk mengkaji: (1) sengketa pelayanan kesehatan di Kabupaten Ende dan Kabupaten Gunungkidul dan pilihan-pilihan forum penyelesaian sengketanya; (2) pilihan-pilihan model forum penyelesaian sengketa pelayanan kesehatan ke depan yang dapat mengakomodasi penyelesaian sengketa melalui hukum adat dan hukum formil.

Penelitian ini merupakan penelitian yuridis empiris, yaitu penelitian yang mengkaji ketentuan normatif di dalam perundang-undangan yang berlaku di Indonesia diwujudkan senyatanya. Jenis penelitian adalah penelitian *socio-legal*, sedangkan sifat penelitian adalah deskriptif. Lokasi penelitian di Kecamatan Wolojita Kabupaten Ende dan Kecamatan Semin Kabupaten Gunungkidul. Bahan penelitian terdiri dari data sekunder dan data primer. Data sekunder diperoleh melalui studi dokumen, sedangkan data primer diperoleh melalui wawancara dengan subyek penelitian. Data primer maupun data sekunder yang telah dikumpulkan selanjutnya dianalisis secara kualitatif. Penarikan kesimpulan dilakukan secara induktif.

Berdasarkan temuan dan analisis kajian disertasi ini, maka dapat disimpulkan, bahwa para pihak yang terlibat dalam proses penyelesaian sengketa pelayanan kesehatan dengan institusi yang pluralistik (pranata adat dan pranata hukum formil), masyarakat mengadopsi secara rasional institusi tersebut dalam upaya penyelesaian sengketa untuk memenuhi kepentingan (*sub legal culture*) melalui *forum shopping*. *Forum shopping*. Adopsi rasional yang digunakan untuk mewujudkan keadilan mengedepankan nilai-nilai yang hidup tumbuh dan melekat dalam masyarakat pada pranata adat dan pranata hukum formil, yaitu: a) *religi-us-magis*, b) kerukunan dan harmoni, c) berjenjang, d) dinamis-plastis, dan e) konsensus.

Kata kunci: Pilihan Hukum, Penyelesaian Sengketa, Pelayanan Kesehatan, Pranata Adat dan Pranata Hukum Formil.

¹ Mahasiswa Program Studi Ilmu Doktor, Fakultas Hukum Universitas Gadjah Mada (*email*: rimawati@ugm.ac.id)

² Promotor, Guru Besar Fakultas Kedokteran, Kesehatan Masyarakat dan Keperawatan Universitas Gadjah Mada (*email*: trisnantoro@yahoo.com)

³ Ko-Promotor, Dosen Fakultas Hukum Universitas Gadjah Mada (*email*: sulastriyono@yahoo.com)

Choice of Law to Dispute Settlement of Health Services Through Adat Institution and Legal Formal Institution

ABSTRACT

Rimawati¹, Laksono Trisnantoro² and Sulastriyono³

This study aimed to identify, explain, analyze and review about: (1) the dispute of health services in Wolojita and Semin and the choice of legal forum which was used to settle that dispute; and (2) the choice of legal forum for dispute resolution of health services which accommodated the principals of dispute resolution of *adat* institution and legal formal institution in the future.

This research was an empirical juridical research, which examined how normative provisions in the legislation applicable in Indonesia are realized in fact. The type of dissertation research used socio-legal approach and descriptive. The research location taken place in Wolojita sub-district of Ende and Semin Sub-district of Gunungkidul. The data consisted of secondary and primary data. Secondary data were obtained through document studies, while primary data were obtained through interviews to research subjects. Both primary and secondary data have been collected and analyzed qualitatively. The conclusions drawn from this study were conducted inductively.

Based on the findings and analysis of this dissertation study, it can be concluded that the parties involved in the process of dispute resolution of health services to the community with pluralistic institutions (*adat* institutions and legal formal institutions) rationally adopt the institution in efforts to resolve disputes to fulfill the interests (sub legal culture) by conducting a forum shopping. Forum shopping is carried out in order to seek justice for the disputes experienced through various forum options available. Rational adoption is used to bring about justice based on the values that grow, live and inherent in both society. The values are: a) *religijs-magis*, b) harmonious, c) tiered, d) dynamic-flexible, and e) consensus.

Keywords: Choice of Law, Dispute Settlement, Health Services, *Adat* Institution, and Legal Formil Institution

¹ Student of Doctoral Program, Faculty of Law Universitas Gadjah Mada (*email*: rimawati@ugm.ac.id)

² Supervisor, Professor of Faculty of Medicine, Public Health and Nursing Universitas Gadjah Mada (*email*: trisnantoro@yahoo.com)

³ Co-Supervisor, Lecturer of Faculty of Law Universitas Gadjah Mada (*email*: sulastriyono@yahoo.com)