

# **Problematic of Demonstration Linked to The Requirement Professionalism Doctor**

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## **Background**

The development happened in the public cause various social phenomena that triggered in a conflict. This conflict not only in the scope of public generally, but also cleared into the scope of medical field. One of the conflicts the first time happened in medical field is to be associated independence to express their messages.

Independence express the messages is the right of each citizen to send thoughts verbally and writtenly independently and responsibility in accordance with the provisions of the current regulation. While one form of expressing the messages in the public is demonstration. Demonstration is an activity, is conducted by a person or more to dismiss thoughts verbally and writtenly are demonstratively in the public. Is arranged into the Article 1 Paragraph 4 juncto Article 9 Law Number 9 Year 1998 concerning Freedom of Expression in Public acknowledged with the Law Number 9 Year 1998.

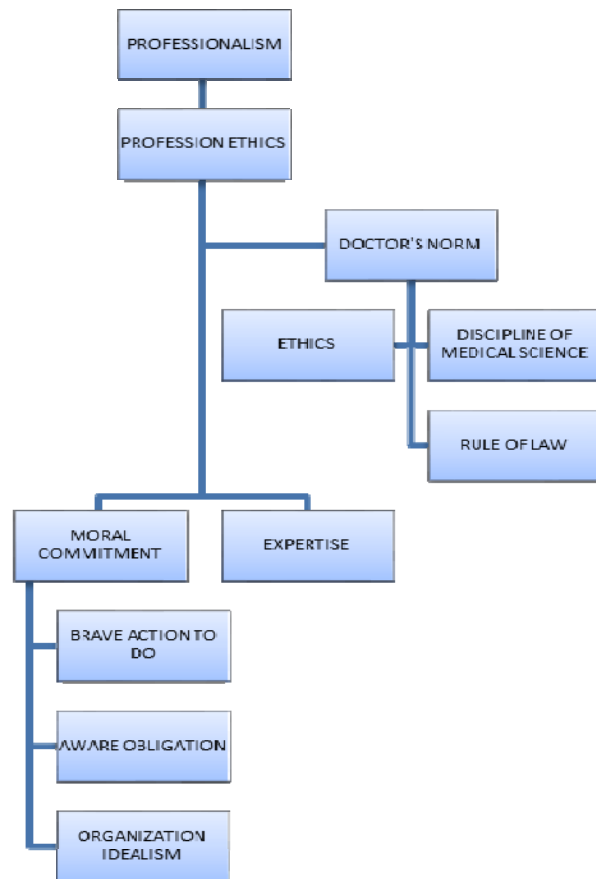
Indonesia was the first level occupied the most of number demonstrations by students from 113 countries in the period during last three years. (Antaranews. Indonesia Urutan Pertama Aksi Demonstrasi. Retrieved from website [www.antaranews.com/berita/268356/indonesia-urutan-pertama-aksi-demonstrasi](http://www.antaranews.com/berita/268356/indonesia-urutan-pertama-aksi-demonstrasi)). While on November 27, 2013 the first demonstration was conducted by doctors in Indonesia, but not for the other countries. Demonstration on November 27, 2013 was associated with the publication of The Supreme Court Verdict Number 365 K/Pid/2012 (Dokter Indonesia Bersatu. *akhirnya-pb-idi-menyerukan-mogok-nasional-tanggal-27-november-2013*. Retrieved from website <http://dib-online.org/akhirnya-pb-idi-menyerukan-mogok-nasional-tanggal-27-november-2013/>

The Supreme Court Verdict discusses about punishment on the violation of the Article 359 The Law Number 1 Year 1946 concerning The Indonesian Criminal Law because of the prisoners (Doctor Dewa Ayu Sasiary Prawani, Doctor Hendry Simandjuntak and Doctor Hendy Siagian) is stated legitimately and convincing filled The negligence and caused the death of the patient who is named Julia Fransiska Maketey in the of R.D Kandou Malalayang Hospital, Manado, North Sulawesi on April 10, 2010. The family of Julia Fransisca Maketey prosecute to the District Court. Results, Ayu and his two colleagues were stated not guilty. However the Public Prosecutor filed te supreme court and the prisoners were sentenced to prison terms 10 months, and this demonstration was instructed by the executive committee of the Association of Indonesithe doctor (IDI) with the theme of “a solidarity refused the criminalization doctor”, and stated that this demonstration in accordance with the article 50 The law Number 29 Year 2004 concerning Indonesian Medical Practice referred to as the law of Medical Practice and Article 27 The law Number 36 Year 2009 concerning Health referred to as the law of Health.

There are two matter that made doctor appear to not deserve to demonstrate. Firstly, demonstration is a method at mass that show strength compared with clarity of thought. This method is regarded as unusual to do by intellectuals. The presence of the doctors is hoped brought the idea sparkled compared to demonstration in the street. Secondly, if being read thoroughly, the contents of the doctor needs more towards the government policy in health field comprehensively (Ario Djatmiko. *Copas : ” Demo, pilihan pahit untuk dokter”*. Retrieved from website <http://politik.kompasiana.com/2013/11/16/copas-demo-pilihan-pahit-untuk-dokter-608366.html>).

Responded to this matter could bring up itself problem for demonstration is conducted by doctor with the profession of ethics code took the moral commitment was associated with the norm of the health workers took the ethics on the professional doctor demands and the perspective of law.

## Roadmap



## The Methods

Doctrinal research is provided a systematic explanation of the provisions arranged particular law category, analyzed relations between provision, explained the difficult fields and, perhaps predicted the future development (Marzuki, Peter Mahmud, 2008: 34). The research approach is used a statute approach and a conceptual approach. Law materials took form of statutory, reference books and the internet. The collection of law material is by means of recording the search and compilation of the law materials accurately, understood and criticised, using the 'snowball' technique and organised and classified. Analysis of the law materials is organized and classified, is conducted in an evaluative' (Yuherawan, Deny, 2014 : 23).

## **Result And Discussion**

Doctor uses his right in accordance with the Article 28 Undang-undang Dasar Negara Republik Indonesia 1945 (UUDNRI) that states : the associated and gathered independence is dismissed thoughts with verbally and writtenly is arranged with regulations, this is drafted by the Law Number 9 Year 1998 concerning Freedom of Expression in Public. The doctor right are associated with the citizen right by generally and the state obligation in the health field, in accordance with the Article 28 H that states : ‘anyone had the right to live physical and spiritual prosperity, lived, and got the health environmental has the right to obtain medical care.

Doctor is stated as a profession, this it is stressed with the profession criteria that doctor covered the certain field (a specialization), is based on the expertise and special skills, is permanent or continually, give precedence to the service than the repayment (Muhammad, Abdulkadir, 2006 : 55). This means that doctors should be precedent to the patient satisfaction, because a professional has always worked well, true and fair. Good is thorough, not from the work, not necklace. True meaning recognized by the relevant profession, simply means that do not violate the right of others while payment will automatically be filled the appropriately if the patient was satisfied.

Doctor is tied three the valid norms for the health personnel is: discipline as the application of the rules of ethics as a science, as a rule the application of medical ethics and the rule of law.

### **The Medical Ethics**

Doctor will be tied on profession ethics. Profession ethics functioned as the internal control, so profession ethics controlled the moral commitment and the expertise level in the public interest is served. Based on the code of ethics, a professional will be measured out whether quite true had moral and quite expert to undertake his profession or not (Wignjosubroto, Soetandyo, 2008 : 225).

The demands of professional doctor always are associated with the Indonesia Medical Ethics Code (KODEKI). KODEKI is the guide for the Indonesian doctor in carrying out the medical practice. As state in KODEKI is

in the explanation of the Article 8 letters f The law of Medical Law and the Article 27 The Law of Health.

The profession moral value is demands from carrier the profession is brave to fill the proffesion needs, realized the obligation that must to be conducted while undertaking the profession, and idealism as the realization of the mission of the profession organization (Suseno, Frans Magnis, 1987 : 25). The needs fulfilment of the doctor profession that doctor must inspire the principle is included in the law of medical practice is the benefit and humanity principle, that doctor could give the benefit that prioritize for humanity.

Concerning the awareness on his obligation as doctor in accordance with the article of 7c KODEKI that the doctor must honour the patient right, his colleague rights, and the other right of the health worker and must maintain the patient belief. The last point is idealism as realization of the profession organisation mission. According to Bartens that the profession group is the moral community that jointly owned the goal and the values (Bertens. K, 1994: 167). Doctor is bundled into several organisations namely IDI (Ikatan Dokter Indonesia) or POGI (Persatuan Obstetri dan Ginekologi), ec cetera. And the vision of IDI Jakarta made IDI the organisation as a prestigious organisation (<http://www.ididkijakarta.com/content/i.php? Mid=2&id=17>).

In the fact, demonstration may not be done if the function of the Organisation that protects doctor gave information and the education about the balanced health and responsible as the realization of the community right or the law upholder concerning the reason medically on the case of punishment that became the background of the implementation of demonstration, in accordance with article 7c KODEKI so as not contradictory occurs, because the idea of holding demonstration had been ordered by IDI, the organisation that protects doctors in Indonesia, so that enforcement for violation of ethics took inspection is performed by MKEK (Majelis Kehormatan Kode Etik Kedokteran) to be complained about to the organization of doctor profession will not work.

### **The Rule of Health Law**

Problem of the health field must be arranged by law, is caused of the health field development is determined by three factors is: the needs of the health care is arranged with steps in the concrete action by the government, the need of the legal regulation in the health field, and the need of the clarity is limiting of the system between the health care and the particular medical action. (Soeparto, Pitono, 2006 : 50).

The role of government with drafting a regulation, is the rule about demonstration, according to the Article 3 of law 9 Year 1998 that the delivery of the messages in public conducted based on in:

- a. The principle of balance between the right and the obligation of legal concept about the right to be the authority is given by the law to person, the law protects the interests of a person of allocating the authority to act in his interests (Soeparto, Pitono, 2006 : 53). While on the right in is the authority is given to person to go through the law, in order to change the rights, obligations, responsibility or other legal relations, both from itself and the other person (Rahardjo, Satjipto, 2000 : 218). Rights received by patient on the service from doctor are to be in the community and positive right to mean the right is classified as available to the community generally and needs the implementation of the positive action from the place of his correlative obligation (Curzon. L.B, 1979: 218). While the doctor is a

general obligation and positive obligation namely the obligation to certain groups is doctor wanted the implementation of positive action.

- b. The principle of 'musyawarah mufakat' is the principle that puts the awareness and sense of responsibility of share.
- c. The principle of legality and justice. The principle of legality had two aspects, is material and formal (Hadjon, Philipus M., 2009: 273). That is material had tight relationship to belief principle that the stipulation must be made with the clear provisions. Now the principle of justice that wants so that in carrying out the government action is not valid arbitrarily or not appropriate (Marbun & Mohammad Mahfud MD, 2006: 63)
- d. The principle of proportionality is the efforts the balanced rights and obligations of the state organizer. (Widodo, Hananto, 2012 : 54).
- e. The benefit principle is the principle that based in the interests of community.

In associated with the citizen obligation expressed the messages in public is based on the Article 6 The law Number 9 Year 1998 to:

- a. honored the rights and freedom of others, that is taking part in maintaining it for life safe, orderly, and peace. The Doctor responsibility is to honour the rights and the freedom of the patient, is to receive medical service and care as a realization of human rights of the health field.
- b. honored the general moral rules in the community, by heeding the religion norms, the decency and the living law.
- c. obeyed the law and the current provisions. The Hollan messages that the law is a good norm is both written and unwritten is a valid in the community and had binding sanctions (Rahardjo, Satjipto, 1982: 61). As though demonstration are conducted by doctor reflected the mistrust towards the integrity of the founder of law and disrespect for the process of law enforcement.
- d. guarded and honored the public safety and order, namely the action that could prevent the enmity emergence, hatred or the insult to the ethnic group, the religion, the race, and intergroup in the community. Doctor obligation prevent the danger emergence on the peace and safety public on

the patient health, because it the community right to the fulfilment of the state obligation.

e. maintained the integrity and unity of the national. The indication that the doctor demonstration did not get the positive appreciation from the community because the community perception is broken between agree and disagree.

Doctor had the right to express messages in public but not fulfil his obligation for the process of demonstration, so as the state could not fill his right to express messages in public, here the role of law as efforts for the fulfilment of the public right in relation with the the doctor obligation.

The law is regarded it as an idea is caused from the principle of economics and social about the behaviour of humankind in the community, is found based on observation, stated in the guidance that worked through observation of humankind concerning what could not be done and done in the implementation of the court (Marzuki, Peter Mahmud, 2008: 114). The aim of law is justice. The law functioned as a tool of to arrange and pacified a community, so the interests emphasis a community became attention when doctors conducted demonstration, because that could become the base of the community to bring doctor legally if refusing to handle the patient.

The characteristics of Indonesia community that originated in Pancasila and Undang-Undang Dasar Negara Republik Indonesia 1945 (UUDNRI 1945), then doctors and the community could develop the principle of 'Musyawarah mufakat' is the principle that put the awareness and a sense of share responsibility, as form of the mediation or non litigation. This as efforts to bring about the aim of the law is to achieve justice and the benefit than only The legality.

If 'mufakat' did not happen, then the legal institution will really function as means integrated the community, then he must be received by the community to undertake his function so people must be encouraged to bring their disputes to court, because only through the legal institutin that justice is given to them (Rahardjo, Satjipto, 1982: 145), and is called the litigation.



The law is needed if the difference of the interests on the health field, happening could be analyzed in the civil law perspective. The community could ask compensation to be based on the Article 1365 *Burgerlijk Wetboek* (BW) that states “each the fraud, that brought the loss to person else obliged the person that because published the loss so, he must compensate this loss”, The fraud is the action stated by the law as the action is banned and violated the norms.

Based on the criminal law, then the community could report doctor is the fraud the article 304 The Law Number 1 Year 1946 concerning The Indonesian Criminal rule, that states “anyone who intentionally placed or left the helpless insider alone, he obligatory gave the life, the maintenance to the person, is threatened with the prison is longest two years eight months or the fine most three hundred thousand rupiahs” so the obligation to give the life and the maintenance to the other person are the main obligation of doctor profession.

### **Conclusion**

Demonstration as form of expressed the messages in public is the right as the citizen, if carrying out the fulfilment on his obligation as the citizen. While doctor did not fulfil of the obligation for demonstration, so as doctor did not have the right to this demonstration.

Doctor as a profession is stated unprofessional, because doctor is not filling the application rule of medical ethics, have not the moral commitment take dared to do to fill the profession needs, aware the obligation must be conducted while undertaking the profession, and idealism as a realization of mission at profession organisation.

The rule of law into the health field emphasized that the community as the side that needs fulfilment of the right on the doctor obligation. The two side could hold the ‘musyawarah mufakat’. If being not found by the agreement, then last efforts are to ask compensation into the privat law or prosecuted into the criminal case.

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