

State Protection In Fulfillment Of Right To Health Based On Constitution Of Timor Leste

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Abstract

The state's protection of the rights of public health is constitutionally obligatory. The government is obliged to provide adequate health services, and the community is entitled to protection as an inherent right. Therefore, the protection and health insurance for everyone is at the forefront of which Article 2 (paragraphs 1-5) states that Health protection is the right of all individuals and society, which is realized with the shared responsibility of citizens, society and the state, thus the duty of the State to protect health consists of formulating and implementing economic, social and environmental policies aimed at promoting, preventing, maintaining, treating and rehabilitate health, through the establishment of conditions aimed at and ensuring risk reduction and access to care, within the limitations of available human, technical and financial resources, as well as carrying out public health promotion and defense carried out by the State and other public entities, and civil society organizations can be associated with those activities, with the provision of health care carried out by State services or other public bodies, or, under their license and supervision, by private bodies with or without a profit motive and the latter's duty of the State does not exclude the duties of persons, individuals or collectives, and society in general.

Keywords: State Protection; Rights Fulfillment; Health; Law Enforcement.

1. Introduction

Timor Leste as an independent and sovereign State received recognition from the international community of the sovereignty of the State of Timor Leste on May 20, 2002. The government of Timor Leste successfully underwent a three-year process towards independence under the guidance of the United Nations, by establishing the United Nations Mission Support in East Timor (UNMISSET) with a mission to provide assistance to Timor Leste for two years until all operational responsibility is fully transferred to the Timor Leste authorities. Subsequently, the Council extended the mission's mandate for one year in Timor-Leste to achieve self-sufficiency. In the mission carried out by the United Nations Mission Support in East Timor (UNMISSET) successfully completed its mandate on May 20, 2005. <https://peacekeeping.un.org/mission/past/unmisset/index.html>, as an independent and sovereign nation so that it is an urgency that must be done by government officials in developing all aspects of the life of the people of Timor Leste as a first step to catch up with other countries.

As the rule of law as reflected in Article 1, paragraph 1 *Constituição Da República Democrática De Timor-Leste* (RDTL) 2002 which expressly states that the Democratic Republic of Timor-Leste is a democratic, sovereign, independent and united State, based

on the rule of law, the will of the people and respect for human dignity. Artigo 1.º (A República) 1. A República Democrática de Timor-Leste é um Estado de direito democrático, soberano, independente e unitário, baseado na vontade popular e no respeito pela dignidade da pessoa humana. Constituição Da República Democrática De Timor-Leste, (RDTL; 2002)

As a state of law, all aspects of society, nationality and state, including the government, must always be based on law. Thus, based on *Constituição Da República Democrática De Timor-Leste* (RDTL; 2002) Article 57 (1-3) concerning health;

Artigo 57.º (Saúde) 1. Todos tm direito saúde e assistência médica e sanitária eo dever de as defender e promover. 2. O Estado promove a criação de um serviço nacional de saúde universal, geral e, na medida das suas possibilidades, gratuito, nos termos da lei. 3. O serviço nacional de saúde deve ser, tanto quanto possível, de gesto descentralizada e participativa.

From the explanation in *Constituição Da República Democrática De Timor-Leste* (RDTL) above says that everyone has the right to health and medical and health care, and the State encourages the creation of public health services and is free for the community, under the provisions of applicable law, and finally, national health services must be managed as decentralized and participatory as possible.

The meaning of the explanation above is as a legal basis or basis for health workers in providing the best and affordable health services for the community, so that it can be hoped that there will be no more people who are difficult to get health services because they do not have economic capacity.

The right to health as a human right has been recognized and regulated in various international instruments which are also regulated in the national law of Timor Leste. Article 25 paragraph 1 states that everyone has the right to a standard of living that guarantees health and well-being for himself and his family, including food, clothing, housing and health care as well as necessary social services, and has the right to security when unemployed, sick, disabled, widowed, reaching old age or experiencing a lack of other means of livelihood due to circumstances beyond his control. <https://www.ohchr.org/en/udhr/pages/Language.aspx?LangID=inz>.

However, the health protection referred to in this case has limitations, namely it only protects the participants, and the participants are everyone who has paid contributions. so that for the sake of justice, for the people of Timor Leste who are classified as below the poverty line, war veterans of all communities are protected by the constitution, so that all responsibilities for domestic health care and referral hospitals abroad such as Indonesia, Malaysia and Singapore must be paid by the Government of Timor Leste through the Ministry of Health.

2. Research Methods

Research is an attempt to determine, develop and test the truth of knowledge. Theo Huijbers, 1982:27. This research uses normative legal research, which emphasizes the study of documents in library research to study secondary data in the field of law related to the problems and objectives of this research. The approach used is a conceptual approach and a historical approach. Peter Mahmud Marzuki, 2005:93. The conceptual approach in this study is intended to seek state protection in fulfilling the

right to health derived from the relevant legal principles. The historical approach is carried out within the framework of tracking cases of state protection in the fulfillment of the right to health. This study emphasizes secondary data consisting of primary legal materials in the form of provisions regarding state protection in the fulfillment of the right to health such as in the Constitution and so on, while secondary legal materials are obtained from textbooks, journals. The procedure for collecting legal materials is carried out through literature studies and document studies in accordance with the problems that have been formulated for further comprehensive review.

3.1. Result and Discussion

3.1. State Protection in Right Fulfilling to Health

State protection of the right to public health Constitutionally, the government is obliged to provide adequate health services, and the community has the right to protection as an inherent right, so that the protection and health insurance of everyone is at the forefront of which Article 2 (paragraphs 1-5) states that Health protection is the right of all individuals and society, which is realized with the shared responsibility of citizens, society and the state, thus the duty of the State to protect health consists of formulating and implementing economic, social and environmental policies aimed at promoting, preventing, maintaining, treating and rehabilitate health, through the establishment of conditions aimed at and ensuring risk reduction and access to care, within the limitations of available human, technical and financial resources, as well as carrying out public health promotion and defense carried out by the State and other public entities, and civil society organizations can be associated with those activities, with the provision of health care carried out by State services or other public bodies, or, under their license and supervision, by private bodies with or without a profit motive and the latter's duty of the State does not exclude the duties of persons, individuals or collectives, and society in general.

Artigo 2.o Princípios outlets

- 1. A protecção da saúde constitui um direito de todos os indivíduos e da comunidade, que se efectiva pela responsabilidade conjunta dos cidadãos, da sociedade e do Estado.*
- 2. o dever do Estado de protecção da saúde consiste na formulação e execução de políticas económicas, sociais e ambientais que visem a promoção, prevenção, manutenção, tratamento e reabilitação da saúde, através do estabelecimento e estabelecimento de redi prestação de cuidados, nos limites dos recursos humanos, técnicos e financeiros disponíveis.*
- 3. A promoção ea defesa da saúde pública são efectuadas pelo Estado e outros entes públicos, podendo as organizações da sociedade civil ser associadas quela actividade*
- 4. A prestação de cuidados de saúde é efectuada por serviços do Estado ou por outros entes públicos, ou, sob licenciamento e fiscalização daquele, por entidades privadas com ou sem fins lucrativos.*

5. *O dever do Estado não exclui o das pessoas, individuais ou colectivas, e da sociedade em geral.*

The Government's obligation to fulfill the people's constitutional right to health has an international juridical basis, namely in Article 2 paragraph (1) of the Convention on Economic, Social and Cultural Rights.

Article 2 (1). *Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*

<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>. *International Covenant on Economic, Social and Cultural Rights*

In the elucidation of the above article it is stated that each State party to the present Covenant undertakes to take steps, both alone and through international assistance and cooperation, especially technical and economic assistance and to the extent available resources, in order to achieve progressively the full realization of the recognized rights in the present Covenant using all appropriate measures, including the establishment of legislative measures.

Then the national constitution has also stated in Article 56 (Social Security and Assistance) 1. All citizens have the right to social assistance and security in accordance with the law. 2. The state will promote, in accordance with state resources, the establishment of a social security system, then in Article 57 paragraph (1-2) which states that first everyone has the right to health services and medical care, and is obliged to protect and promote them and that second is that the State will promote the establishment of a universal and general national health system, and as far as possible free of charge under the law, and the third is that national health services will, as far as possible, be managed in a decentralized and participatory manner, and in Artigo 53.^o (Direitos dos consumidores) 1. Os consumidores têm direito qualidade dos bens e serviços consumidos, a uma informação verdadeira e protecção da saúde, da segurança e dos seus interesses económicos, bem como reparação de danos, where the explanation in Article 53 states that consumers are consumers have the right to goods and services of good quality, to correct information and to protect their health, safety and economic interests, as well as to obtain compensation for losses, so that the protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially government. This government obligation is also confirmed in the law on the ministry of health regarding the health system which is written in Article 6 paragraph (1) Artigo 6. hospitalê níveis da prestação de cuidados de saúde 1-O sistema de saúde assenta nos cuidados de saúde primários que devem situar-se junto das populações e cobrir as suas necessidades, desenvolve-se através dos cuidados e secciaá de sario e noutras institutes especializadas. (Lei Do Sistema De Saúde10/2004) in this explanation regarding the provision of health care systems based on primary health care that must be located close to the community and meet their needs, which will be developed through secondary health care and culminating

in national referral hospitals and other institutions , then in Article 22 paragraph (1-2):

Artigo 22.o Abrangência dos cuidados 1-A lei pode especificar as prestações garantidas aos beneficiários do Serviço Nacional de Saúde ou excluir dessas prestações cuidados não justificados pelo estado de saúde. 2-Só em circunstâncias excepcionais em que seja impossível garantir em Timor-Leste cuidados de saúde essenciais nas condições exigíveis de segurança, e em que seja possível fazê-lo no estrangeiro a custosal e haven razooáveistal participant nas respectivas despesas.

In the explanation of the article above it says that the law regulates to determine the benefits of state guarantees for National health services and only in emergency situations where it is not possible to guarantee care in Timor-Leste then on the condition that where it is possible to do so abroad in the sense that any service The health of the community at the Hospital Nacional Guido Valadares (HNGV) is no longer able to carry out treatment, the government through the Ministry of Health will send patients abroad, including Indonesia, Singapore and Malaysia for further treatment.

Thus, the government is tasked with organizing health efforts that are equitable and affordable for every community. Health protection by the state is carried out through aspects of social security for health, adequate health facilities, qualified medical personnel, and financing of free services by the people in Timor Leste.

Efforts to fulfill the right to health can be carried out in various ways in the form of prevention and healing. In this prevention effort can include the creation of proper conditions for health, both ensuring the availability of food and jobs, good housing, and a healthy environment. Meanwhile, healing efforts are carried out by providing optimal health services. (Latipah Nasution, 2020). Artigu 58.o (Hela-fatin) Ema hotu iha direitu ba nia an, nia família atu iha uma ida ho nia dimensaun no condisaun di'ak, moos no konfortu atu bele iha intimidade ba ema ida-idak no privacy and familiar (Constitution, 2002)

The above description explains that everyone has the right to obtain safe, quality and affordable health services in accordance with the Constitution of the Republic of Timor Leste. Even though in this case the government is fully responsible for improving people's health, important public wars are still needed as an effort to fulfill public health rights in accordance with human rights values. The Quarterly Point of Tutik and Shita Febriana. 2010 : 4-5.

3.2. The Right Fulfillment to Health

Health is a human right and one of the elements of welfare that must be realized by a country in accordance with the goals of the East Timorese nation which has been stated in the constitution as the basis of the state. Thus, efforts to improve public health are carried out based on the principles of non-discrimination, participation, protection, which means the formation of East Timor's human resources, as well as increasing the nation's resilience and competitiveness, as well as national development.

The main basis that the protection of human rights is the government's obligation as a democratic principle that the government is given the power to protect the rights of citizens. So with the concept of a welfare state, it is a concept of a developed country that gives the government more power to act. With this power, in order to promote and achieve the fulfillment of human rights to obtain health in accordance with the very Constitution, the Government is no longer just to ensure that someone does not violate or have their rights violated, but the government must strive to fulfill these rights. Thus, the right to health is the government's obligation to fulfill it in accordance with the very constitution.

The implementation of health referred to above, where the Government's obligation to fulfill the right to public health as a human right has a juridical basis in the International Convention Article 2 paragraph (1) concerning Economic, Social and Cultural Rights stipulated by the UN General Assembly 2200 A (XXI) dated December 16, 1966. Article 2 (paragraph 1) which states that health protection is the right of all individuals and the community, which is realized with the shared responsibility of citizens, society and the state. (*Lei Do Sistema De Saúde 10/2004*). Health as a human right cannot be separated from the characteristics of human rights, namely "rights" in the real and personal sense. Even if there are obligations attached to human rights, it is merely a limitation so that the implementation of human rights does not violate the human rights of others.

Fulfillment of the right to health can be done in various ways, including through prevention and cure. As well as prevention efforts through the creation of proper conditions for public health, both ensuring the availability of food and jobs, good housing, and a healthy environment. Then the healing effort will be carried out by providing optimal health services. And health services will cover several aspects, including aspects of social security for health, aspects of adequate health facilities, aspects of qualified medical personnel, and aspects of financing free services to people who are unable to reach them. Article 12 paragraph (2) of the International Convention on Economic, Social, and Political Rights

- a) Provisions for reducing child stillbirth rates and healthy child development;
- b) Improvement of all aspects of environmental and industrial health;
- c) Prevention, treatment and control of all endemic infectious diseases, work-related diseases and other diseases;
- d) The creation of conditions that ensure all services and medical attention when illness occurs.

Lei Do Sistema De Saúde 10/2004) concerning Health regulates various kinds of efforts that are the responsibility of the government to achieve optimal health degrees. In general in Article 3 of health policy:

Artigo 3.o Política de saúde. 1-A política de saúde é definida pelo governo, competindo ao Ministério da Saúde propô-la, promover e vigiar a respectiva execução e coordenar a sua acção com as organizações internacionais de saúde, designadamente a Organização minist e Mundial com de Sade áreas conexas, e obedece s seguintes directrizes: a) A promoção da saúde ea prevenção da doença fazem parte das prioridades noplaneamento das actividades do Estado; b) A criação

dum serviço nacional de saúde universal e geral tem por objective fundamental possibilitar o acesso aos cuidados de saúde a todos os cidadãos em condições de igualdade, seja qual for a sua cor, raça, idade, civil, sexét, posição social ou situação económica, convicções políticas ou ideológicas, religião, instrução ou condição física ou mental, bem como garantir a equidade na distribuição de recursos e na utilização de serviços; c) São tomadas medidas especiais relativamente a Grupos sujeitos a maior riscos, como as crianças, os adolescentes, as grávidas, os idosos e os deficientes; d) Os serviços de saúde estruturam-se e funcionam de modo a melhor corresponder às necessidades dos utentes e articulam-se entre si e com os serviços de segurança e bem estar social. e) A gestão dos recursos disponíveis deve ser conduzida de forma a obter deles a maior qualidade eo maior proveito socialmente til ea evitar o desperdício ea utilização indevida dos serviços; f) reconhecida a liberdade de prestação de cuidados de saúde e de constituição de entidades privadas com ou sem fins lucrativos que visem aquela prestação, com respeito pelas condições técnicas e qualificaís, com sujeição disciplina e fiscalização do Estado; g) apoiado o desenvolvimento do sector privado da saúde, em particular as iniciativas das instituições sem fim lucrativo, em complementariedade com o sector público; h) A actividade de produção, importação, distribuição e comercialização de produtos químicos, biológicos e farmaceuticos, bem como de outros meios de tratamento e diagnóstico fica sujeita a disciplina e fiscaligaran, de forma do Estado satisfação das necessidades ea racionalização do consumo. i) promovida a participação dos indivíduos e da comunidade organizada na definição da política de saúde e planeamento e no controle do funcionamento dos serviços; j) incentivada a educação para a saúde, das populações, estimulando nos indivíduos e nos Grupos sociais a modificação dos comportamentos nocivos à saúde pública e individual; k) estimates a formação ea investigação para a saúde, devendo procurar-se envolver os serviços, os profissionais ea comunidade. l) reconhecida a complementariedade das medicinas alternativas, as quais deverão exercer-se com a maior responsabilidade e sob orientação e fiscalização dos serviços de saúde, nos termos da lei.

From the explanation above, it is stated that health policy is determined by the government, and the Ministry of Health is responsible for proposing it, promoting and monitoring its implementation and coordinating its actions with international health organizations, namely the World Health Organization and the ministries that oversee it and adhere to the following guidelines:

- a. Health promotion and disease prevention is one of the priorities in the planning of State activities;
- b. The creation of universal and common national health services is aimed at: It is imperative to enable access to health care for all citizens on equal terms, regardless of skin color, race, marital status, gender, ethnic origin, language, social position or situation economic, political or ideological, religious, educational or physical or mental beliefs. conditions, as well as ensuring equitable distribution of resources and use of services;

- c. Special measures are taken against groups at greater risk, such as children, adolescents, pregnant women, the elderly, and the disabled;
- d. Health services are structured and function to better meet user needs and are articulated with each other and with social security and welfare services.
- e. The management of available resources must be carried out in such a way as to obtain from them the highest quality and maximum social benefits and avoid wastage and misuse of services;
- f. The freedom to provide health care and to establish private bodies, whether for profit or not, for the purpose of such provision is recognized, with respect to technical conditions and appropriate professional qualifications, subject to the discipline and supervision of the State;
- g. The development of the private health sector is supported, particularly not-for-profit initiatives, complementary to the public sector;
- h. Production, import, distribution and commercialization of chemical, biological and pharmaceutical products, as well as other methods of treatment and diagnosis, are subject to state discipline and supervision, to ensure state defense and protection health, satisfaction of needs and rationalization of consumption.
- i. The participation of individuals and organized communities in determining health policy and planning and in controlling the functioning of services is promoted;
- j. Health education for the population is encouraged, encouraging individuals and social groups to change behaviors that are harmful to public and individual health;
- k. Training and research for health is encouraged, and efforts should be made to engage services, professionals and the public.
- l. the complementarity of alternative medicine is recognized, which must be carried out with the greatest responsibility and under the guidance and supervision of health services, according to the provisions of the law.

A national development program in the health sector which seeks to improve health status through the development and consolidation of all policies in the Timor Leste national health system which reflects the government's efforts through the Ministry of Health which is to defend the rights of patients as consumers in health services, so that improving health status is a real consequences for the quality of comprehensive and integrated health services so that the quality of service and the provision of facilities at every hospital in Timor Leste must be felt by all citizens.

To explain this, the author uses an example where The Government of Timor Leste budgets annually about 5 million US dollars (USD) for medical referrals for citizens seeking treatment abroad with a referral from the Timor Leste National Hospital with the provisions determined based on the rules of the Timor Leste Ministry of Health. Hospitals referred by the Timor Leste government through the ministry of health based on collaboration with hospitals abroad include Malaysia, Singapore and Indonesia. Of these three countries, Indonesia has the most citizens for treatment, around 75% at

Siloam Karawaci Hospital, Tangerang, Indonesia. (Data taken from the Ministry of Health of Timor Leste, 2021)

So that to achieve optimal health status for the people of Timor Leste, a health effort is needed by using a maintenance approach, health promotion (promotive), increasing disease prevention (preventive), then healing disease (curative), and health recovery (rehabilitation) which is carried out thoroughly , integrated.

Closing

Recognition of National Law and International Law on the right to health as the basis for guaranteeing a certain health condition, both the Government and the community. This definition of the right to health is used in human rights instruments as already stated, generally referring to the “highest attainable degree of health” as the goal of the right to health. Therefore, the substance of the right to health is very relative, because the highest degree that can be achieved. Thus, the right to health contains two aspects. First, the aspect of health as an individual right that gives birth to the government's obligation to fulfill it. Second, the aspect of public health.

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