



Conference Paper

Mental Health Law After COVID-19 Pandemic in Indonesia: Challenges and Development

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Abstract.

The COVID-19 pandemic occurred globally since the end of 2019. It started in China and later spread to all countries around the world. This pandemic has not only impacted the disruption of the global economic system and social factors but has also impacted the lives of people across the globe. While most of them lost their lives due to the pandemic, millions of them are going through physical and mental health problems. Physical disorders due to COVID-19, received great attention and are often discussed in various scientific forums compared to mental disorders. Mental health disorders were found not only in the former COVID-19 patients and the families left by the family members, but also by people who have been affected socio-economically due to this pandemic. The article discusses the development of legal regulations related to mental health after the pandemic in Indonesia and the challenges faced while implementing these regulations. The method used in writing this normative juridical article is by using secondary data in the form of legislation related to mental health in terms of Health Law and Human Rights law. It was concluded that mental health problems in Indonesia need more attention from the government and related institutions, both government and private institutions. The main challenge is to overcome the lack of education regarding mental health; therefore, prioritizing socialization and education is a mustto reduce the number of mental health disorders within the community and as a means of being respectful of the rights of people with mental health issues.

Keywords: mental health, pandemic COVID-19, health law, human rights law

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1. INTRODUCTION

The COVID-19 pandemic presents daunting challenges in all aspects of society and across sectors. The catastrophe of the COVID-19 pandemic, unlike earthquakes or tropical storms, will not end in a matter of hours or days. It will be with us for at least another year, and maybe for a few more years. COVID-19 has had a serious impact on all parts of our society. As we know that the COVID-19 virus first spread in late 2019. The COVID-19 virus was firstly found in Wuhan, China and within a matter of months, has spread widely throughout the globe. COVID-19 has become an international issue since it became a global pandemic. Aside from health problems, this pandemic has also impacted other sectors, namely the economy, social and environment.

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Various sorts of efforts have been put forth, such as, examinations, care, treatments, and the isolation of patient who have been declared positive alongside guarantine measures. Government policies have implemented the "Large-Scale Social Restriction" (PSBB) policy to prevent the spread of COVID-19 transmission. Said implementation of PSBB has been regulated in "Government Regulation Number 21 of 2020" which was signed by the President. Meanwhile, the technological aspects and necessities concerning PSBB are stated within the "Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 regarding Guidelines for Large-Scale Social Restrictions" in the context the Acceleration of grasping Corona Virus Disease 2019 (COVID-19) signed by the Indonesian Minister of Health. "Law Number 6 of 2018 concerning Health Quarantine" mentioned that lockdown is a method used to overcome the COVID-19 pandemic. Moreover, it also explains health quarantine at the entrance and at places of highly risk activities are carried out. Besides that, it also applies for transportation means, people, goods, and environment. It can be said that the purpose of PSBB is to limit activities of people who are suspected to be infected in certain areas to avoid the spread of the COVID-19 virus [1]. The consequences of these lockdowns towards mental health are poorly understood. On one hand, such significant adjustments to regular habits can be harmful for mental health. Yet on the other, given that it touched the entire population, it might not be perceived adversely [2, 3].

Mental health issues have become an unsettled health problem in society, both according to the global and national levels. Even more so, during the COVID-19 pandemic, mental health problems will have become even more difficult to solve. The influence of the COVID-19 pandemic is not only towards one's physical health, but towards the mental health of millions as well, both those who are directly exposed to the virus and those who are not. Currently, people are still struggling to take control of the spread of the COVID-19 virus, with feelings of anxiety, fear, and mental stress arising because of physical distancing, and restrictions on social relationships, and uncertainty having spread. These things undoubtably have an impact on the increase of mental health issues and disorders within the community.

The Basic Health Research of 2018 discloses that over 19 million people above the ages of fifteen sustain mental and emotional disorders, and more than twelve million people above the age of fifteen suffer from depression. Furthermore, established from the Sample Registration System run by the Research and Development Agency in 2016, the data regarding suicides per year is 1,800 people which is the equivalent of five people committing suicide every day, and 47.7% of suicide victims are within the ages of ten to thirty-nine years old, which are considered to be a youthful and productive age.



Mental health problems in Indonesia are related to the problem of the high currency of people suffering from mental. Currently, Indonesia has a high level of individuals who suffer from mental disorders, with around 1 in 5 of the population, meaning that about 20% of the population in Indonesia has the potential for mental disorders [4].

Moreover, until now not all provinces have mental hospitals, which means, not all people with mental disorders are able to receive proper treatment. And the limited infrastructure and high burden is due to mental disorders. The problem is that professional human resources for mental health workers are still lacking, because up until today the amount of psychiatrists as professionals within mental health services is only a mere 1,053 people. Meaning, that a single psychiatrist handles about 250.000 residents. This is a very big burden that has to be tackled in order to improve mental health ministrations in Indonesia [5].

Mental health problems in Indonesia are also constrained by stigma and discrimination. We realize that to this day we are trying to educate the public and other professionals so that we can eliminate the stigma and prejudice towards people suffering from mental health issues, as well as achieve human rights for people suffering from said mental illnesses [6].

The situation of mental health problems has prompted the government to ensure that mental health can be prioritized more than before. Local governments must make mental health programs and services the focus of attention, of course by providing various facilities and infrastructure related to adequate mental health.

The emergence of international health law was marked by the start of the World Congress on Medical Law in Gent, Belgium in 1967. Then, health laws were introduced further and wider, namely in 1979, which at that time coincided with the holding of the Fifth Congress of the World Association for Medical Law. This congress also gave birth to the world health organization. The world health organization is called the World Health Organization (WHO). After the health law in Europe became more well-known, the emergence of health law in Indonesia can be said to be something that was not thought of before.

This health issue in Indonesia is regulated in Law no. 23 of 1992 concerning Health, which in Chapter III Article 1 Paragraph (1) and Article 4 states: Article 1 (1) "Health can be defined as the state and well-being of a person's soul, body, and society that warrants a person to live productively, both in social and economic aspects". Furthermore, Article 4 states: "Everyone has the same right in obtaining optimal health degrees." In relation to the right to health which must be owned by everyone, the state provides guarantees to make it happen. This guarantees among others, is regulated in Chapter IV starting



from Article 6 to Article 9 of Law no. 23 of 1992 concerning Health in the duties and responsibilities of the government.

Human Rights are a natural right that every human being has. In its application, it no longer distinguishes gender, culture, language, skin color, or nationality. Human rights are rights that can and are inherent as human rights. Everyone has the same rights in the eyes of the state.

The making of this article is important due to the fact that the COVID-19 pandemic is believed to have caused an increase of mental health problems within Indonesia's society. It can be said that this problem has not received enough attention, both from, the government and the society. Mental health disorders will influence us as a society starting from, the smallest scope, which is family, community, and country. As far as the writer's knowledge goes, there haven't been any scientific papers or journals written about the importance of tackling difficulties and obstacles of mental health laws in Indonesia post COVID-19. The scientific journals used by the writer as reference, discusses mental health, and rights to mental health, including those who have suffered mental health issues during the pandemic. Whereas this article empathizes mental health issues caused by the COVID-19 pandemic, alongside the difficulties and obstacles which are faced namely in mental health laws in Indonesia. The writer hopes that this paper will bring enlightenment to the public and especially those with the power and ability as the policy makers.

2. METHODOLOGY

This research is normative-qualitative research that conducts research by narrating the data obtained based on legal theories, concepts, norms, and rules that are related to the object [7]. The nature of this research is descriptive, which aims to get an overview of a certain thing [8]. It applies secondary data, acquired from library references, such as journals, literature, and scientific articles. The data obtained in connection with this research is a document study of secondary data. That includes binding legal materials as the prime sources, which are Law No. 36/2014 on Health and Law No. 18/2014 on Mental Health. In addition, secondary legal materials are used, which provide explanations on primary legal materials, such as regulations used by other countries related to research objects, research results, scientific works and articles that are closely related to mental health laws, especially after the COVID-19 pandemic in Indonesia.

At the next stage, efforts are put in, in response to main issues and can get conclusions and suggestions. Qualitative approach used to refine and analyze data that has



been obtained by the authors in this study. Deductive reasoning method used to obtain conclusion by conducting reasoning process that starts from a general statement or thesis about the mental health issue from the perspective of human rights law, to arrive at a specific conclusion about a particular matter, namely challenge and development of mental health law post COVID-19 pandemic in Indonesia

3. RESULTS AND DISCUSSIONS

According to WHO (1948) health is defined as "a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity". In 1986, WHO further explains that resources are for everyday life, not life goals. Health is a positive concept that emphasizes social and personal resources, as well as physical capacities. The determinants of good health are genetics and the environment [9]. Physical and mental health are the two things that become the benchmarks, in addition to spiritual, emotional, and financial health that support physical and mental health. Someone who has good physical health will have bodily functions and processes that work optimally.

Mental health refers to a person's emotional, social, and psychological well-being. Mental health is as important as physical health as part of a fully active lifestyle. Defining mental health is more difficult than defining physical health, because many psychological diagnoses depend on an individuals' perceptions of their experiences. With advances in medical technology, it is now possible to uncover several signs of different types of mental illness according to a person's physique through scanning and DNA tests. Stable mental issue is not just shown by the missing of depression, anxiety, or other disorders. It also relies on someone's capability to relish their life, rebound from hard times and adapt to misfortune, balance several components of their life, such as family, finances, security in life, and outstretch their greatest ability. In general, to measure the degree of public health, WHO uses the indicator "life expectancy".

Frequent indicators of health can be grouped into indicators that directly calculate health phenomena's (e.g., disease, mortality, service use) and indirect measures (e.g., indicators of social development, education, and poverty). It is derived from population statistics that the level of schooling attained and entries to clean water and sanitation, it creates a possibility of categorizing a country quite accurately, as having a population with a low, moderate, or high disease burden. International health indicators used in emergent nations mostly address morbidity, mortality, and important precursors of both. On the contrary in advanced economies, most key health indicators mirror individual



lifestyles and behaviors, namely physical exercise, smoking, diet, or substance and alcohol abuse [10, 11].

Human health and mental issues cannot be characterized based off a missing mental health condition. Instead, it should be characterized also by the social, psychosocial, political, financial and physical environment [12]. Then it will empower people and populaces to live a life of nobility, fulfilled with their rights and within the even-handed interest of their potential [13].

Mental health problems during and post COVID-19 pandemic caused by stressors such as exposure to infected sources, infected family members, loss of loved ones and physical distancing. Further difficulty like financial loss, psychological effects such as depression, anxiety, psychosomatic, preoccupations, insomnia and domestic violence are often occur [14].

Some research shows that the cause of anxiety and stress symptoms are continuing to be exposed in news and social media about COVID-19. This could bring people to potential hoax or fake news and misinformation that could possibly lead to escalating anxiety. Unnecessary fears and anxiety brought by misinformation and fake news that spread easily through social media platforms while it is still unpredictable and uncertain facts on COVID-19. Furthermore, continually watching members of the community suffer from the pandemic in the news and social media would increase sadness and an anxious feeling. Other risk factors that cause mental health disorders are mainly depressive symptoms during and post pandemic are low economic status, low education level, and employment. The policy of lockdown decreased in demands for services and goods which influenced local business and industries globally. High employment cases occurred around the world. These situations caused the decrease in quality of life and uncertainty [15, 16].

In Indonesia, the COVID-19 pandemic has also had a negative effect on individuals' mental health. Recent studies of respondent with health sector background and people who engage in health behaviors found that as much as 20.4 % of the total respondents had symptoms of depression, 34.6% had symptoms of anxiety and 25.4% had symptoms of stress. Meanwhile, 12.4% experienced moderate to severe depression, 26.3% experienced anxiety, and 16% experienced stress [17, 18].

Human rights are "fundamental pillars of justice and civilization," in addition to rights with legal and moral weight. Two decades ago, the Committee on Economic, Social, and Cultural Rights of the United Nations (CESCR) adopted its general opinion on the right to health. By formally ratifying this comment, states were obligated to emphasize the right to health. In the past twenty years, the right to health has come to be understood as a



crucial aspect that should be considered for this right to be realized. "Without mental health there can be no true physical health" which was stated by the first director-general of the World Health Organization (WHO).

The legal framework justifies international scrutiny of national mental health policies and practices is international human rights instruments. This makes it significant because they offer fundamental protections that cannot be altered by conventional political processes. Human rights and mental health are intricately intertwined. They are complimentary strategies for enhancing human potential. Since only individuals who can operate at a reasonable level can participate in political and social life, some level of mental health is essential for human rights. Human rights, on the other hand, are crucial for mental health since they grant freedom to form and express opinions with protection from injury or restraint [4].

In UN Common Gathering 2006, The United Nations initiated international law stressed on the human rights of people with disabilities, which incorporates people with psychosocial, mental, and cognitive incapacities through the "Convention on the Rights of People with Disabilities" (CRPD). States which ratified bound to this convention and implementation on their national laws. The purpose of this convention is to respect rights of people with disabilities includes mental health disability.

The right to health is the right to the enjoyment of the highest attainable standard of physical and mental health. Grasping the concept of health as a basic human right enables the development of a legal obligation for states to ensure access to well-timed, sustainable, and affordable health care with suitable quality and to fulfill the basic factors of health, for example safe and uncontaminated water for consumption, knowledge and education relating to health, and gender equality.

The United Nations Committee on Economic, Social and Cultural Rights has defined that health is a basic human right that is vital for the implementation of other human rights. People has the right to enjoy the highest attainable standard of health conducive to living a life of dignity.

A State's responsibility to provide the right to health, including through the allocation of "maximum available resources" to significantly achieve said objective, is assessed upon numerous mechanisms in human rights, such as the Universal Periodic Review, or the Committee on Economic, Social and Cultural Rights. In nearly every country, the right to health has been transformed into national legislations.

The connection between mental health and human rights can be defined through three ways, which are: mental health could be affected by human rights violation like torture and displacement, human rights could be impacted by mental health trainings,



programs, and regulations. Furthermore, human rights advancement will synergistically bring benefits to mental health. Because of this, it can be stated that besides clinical and economic reasons, there are also moral and legal obligation to advance human rights and mental health care [4].

The right to health must be fulfilled without discriminate on the grounds of race, age, ethnic, or other status. Non-discrimination and equality require states to take actions to correct discriminatory laws, practices, or policies. Also important is the participation of national stakeholders, including non-state actors such as non-governmental organizations, who are actively involved in all phases of programming such as assessment, analysis, planning, implementation, monitoring and evaluation.

The international legal instruments governing the right to health are:

- Article 12(1) International Covenant on Economic, Social and Cultural Rights (ICE-SCR)
- 2. Article 5 (iv) Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- 3. Articles 10(h), 11(1)(f), 12, 14(2)(b) and 16(1)(e) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- 4. Articles 24 and 25 of the Convention on the Right of the Child (CRC)
- 5. Articles 23(1) and 25 of the Convention on the Rights of Persons with Disabilities (CRPD)

Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social, Economic and Cultural Rights (ICSECR) in 2006. And became a full member of the UN Human Rights Council and UN Security Council. In 2007, Indonesia ratified the Convention on the Rights of People with Disability. The provisions of these international agreements become part of Indonesian law upon ratification, with all the responsibilities it entails. Ratification of international human rights treaties, however, does not guarantee its application or effective protection. Indonesia has a considerable amount of work to do before its citizens' rights under the ICCPR and ICESCR can be realized because the country's law institutions such as at the police department, district attorney, and tribunal - are all in a condition of disintegrate and incapacitate of respecting the regulation and defending citizens' rights.

The legal provisions regarding the right to health in Indonesia are regulated in:

1. UUD 1945 (article 28H paragraph 1)



- 2. Law No. 18/2014 on Mental Health
- 3. Law No. 36/2014 on Health

Although Indonesia has a law on mental health, its application is not yet at its best. The varied level of public understanding and information access, the constrained resources that are still concentrated on the island of Java, the low budget for mental health programs because they have not been prioritized, and the breakdown in the primary service are all factors that have an impact on implementation [17]. Within certain groups in society, there is a certain stigma or negative outlook towards people with mental health disorders. Said stigma or negative outlook towards those who suffer from mental health issues in Indonesia is influenced by a certain environment, specifically a negative one. Labeling, exclusion, and stereotypes against people who suffer mental health issues results in said people choosing to remain silent or not consult an expert, which results in them not receiving proper care and treatment. Then, the government needs to socialize and campaign all levels of Indonesians to overcome this issue in the society. Support from conventional media and social media is very important to reach all levels of society. Incomprehension of mental health in Indonesia is due to the short range of knowledge about it within society. Said incomprehension creates a negative outlook towards people with mental health issues. As a result, people with mental health disorders are mishandled. It is essential for the government to educate people in all levels about mental health issue, create a curriculum at school and education institutions and provide them with experts to disseminate the mental health issue. Furthermore, the topic of mental health in Indonesia is still taboo. The restricted knowledge and understanding about it cannot be distinguished from cultural traditions or community beliefs. Some people are said to believe that mental health issues are rooted from superstitions or supernatural elements, therefore the disturbance that people with mental disorders face are considered a disgrace. This apprehension people who need help reluctant to seek said help. It is not infrequently that people who suffer from mental health disorders feel ashamed to be a part of society.

The application of the right to health based on the provisions of international and national law in Indonesia cannot be said to be optimal and good. This can be concluded by looking at the existing reality in terms of providing adequate facilities and according to international standards. In Indonesia, access to mental health is not evenly distributed. Many areas in Indonesia are still lacking in terms of health facilities and personnel. Therefore, it can be said that the factors of availability, access, equity and quality of health facilities and personnel have not been met. The government's mental health budget,



mental hospital capacity, and psychiatric wards in public hospitals are still insufficient to meet the needs of the Indonesian citizens. Mental hospital is a mandatory health facility in every province in Indonesia. This is based on the mandate of Law Number 18 of 2014 concerning Mental Health. Article 52 paragraph 2 states that the Provincial Government is obliged to establish at least 1 mental hospital. In fact, there are six provinces that do not have mental hospitals, which are Banten, Kepulauan Riau, Kalimantan Utara, Sulawesi Barat, Gorontalo and Papua Barat [19]. This means that Article 89 of the Mental Health Law which obliges the Government to budget and complete the establishment of mental health service facilities no later than 5 years after the Act comes into force is not achieved. Furthermore, three provinces do not have a psychiatrist. Whereas Article 41 of the Mental Health Law obliges the Central and Regional Governments to regulate the guarantee of the availability of human resources in the mental health sector to achieve equal distribution of services, in the form of psychiatrists and psychological clinics. One of the factors that influence the lack of psychiatric specialists is the low interest of medical students to specialize in psychiatry. The government could encourage by offering scholarship or give incentives for them.

Article 25 of the "1948 Universal Declaration of Human Rights" proclaimed the right to health on a global scale. "The International Covenant on Economic, Social, and Cultural Rights" Article 12's "Right to Health" was expanded by the United Nations in 1966. Everyone has the right to "the enjoyment of the highest achievable quality of physical and mental health," refer to Article 12 of the Covenant. States parties are obligated under Article 12.2 to "take specific actions to enhance the health of their citizens". The obligations of States parties to implement Article 12 of the ICESCR have been thoroughly explained by the "Committee on Economic, Social, and Cultural Rights" in General Comment 14. The Committee underlines that one of the rights granted by Article 12 is giving everyone an equal chance to achieve the best possible level of health by the right of health protection. Indonesia also ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2011. This means that Indonesia agreed to guarantee equal rights for all persons with disabilities including the enjoyment of freedom and security, and freedom from torture and ill-treatment.

The rights to sufficient equipment, facilities, and supplies, such as medicines, and well-trained employee, proper mental health treatment and care, fair and equal treatment, non-discrimination and gender equality, and the rights of children and adolescents, as well as the rights of people with disabilities, are sort of the responsibility of governments that are listed in General Comment 14. Although it is acknowledged that the realization of these obligations must occur gradually, in part due to various resource



constraints, Article 12 imposes on States parties several duties that apply instantly. States parties have direct responsibilities regarding the right to health, such as ensuring that the right shall be exercised without any form of discrimination and taking actions to fully implement article 12. Such actions must be planned, specific, and directed towards fully realizing the right to health. States Parties have a specific and ongoing duty to advance article 12's full implementation as quickly and successfully as they can. To fulfil their commitments under Article 12 of the ICESCR, Indonesia's national, province, and district administrations could get there more rapidly and easily.

Right to health is considered as fundamental rights by the constitution of WHO that said, "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political believe, economic or social conditions" [20]. Like other human rights, the right to health places three types of obligations on State parties, which are the obligations to respect, protect, and fulfil [21]. In relation to mental health, the Obligation to Respect means that the state does not prohibit or restrict people who need access to mental health treatment. It also ensures access to mental health efforts for the entire community. The Obligation to Protect is an effort by the state to ensure that there are no prohibitions, restrictions, or forms of discrimination from other parties on access to mental health care, including the privatization of services that does not interfere with the quality of services. Obligation to fulfill means state efforts taken from a legal and policy perspective, such as the existence of the Mental Health Law and derivative regulations, drafting national mental health efforts, and others [22].

The responsibility to fulfil is followed by responsibilities to enable, offer, and promote. States must refrain from interfering directly or indirectly with the exercise of the right to health under the requirement of respect. States must take precautions to stop third party from interfering with article 12 guarantees under the commitment to safeguard. To fully realize the right to health, States must adopt appropriate legislative, administrative, budgetary, judicial, promotional, and other measures. States parties are obligated by law to sufficiently recognize the right to health in their national political and legal systems, preferably through legislative implementation, to adopt a national health policy with a clear plan for enforcing the right to health, and to provide the funding required to make such regulations and plans effective. These duties cover both physical and emotional well-being [23].



4. CONCLUSION AND RECOMMENDATION

The Indonesian Constitution's emphasis on rights predates the Universal Declaration of Human Rights. Indonesia has ratified important international treaties, and domestic law provide a sufficient legal framework for the protection of human rights. But despite their prevalence and persistence, human rights violations largely go unnoticed and unacknowledged. The protection of the rights of people with mental illness is a topic that the National Human Rights Commission has just lately started to take an interest in. The rights of people with mental illness need to be protected in more ways than only through legislation. Government action at the country, state, and local levels, significant increases in the level of investment in mental health services, coordinated action by mental health professionals and consumer and care giver organizations. The National Human Rights Commission has a key role in defending the rights of people with mental illness. Furthermore, it also crucial for improving the human rights situation for people with mental illness in Indonesia. Governments must accept that systematic violations of human rights are frequent and pervasive, take concrete steps to stop these violations, and fulfil their domestic and international legal and moral commitments. This calls for the application of anti-discrimination laws and the principle of equality before the law in sectors including social security, housing, work, and access to education. It's a fundamental right to have access to mental health care. The availability of medications and other necessary supplies, as well as an adequate supply of well-trained mental health professionals from all relevant disciplines, are all necessary for the provision of basic healthcare services. Governments at all levels will need to make significant additional investments to do this [23].

Professionals must be more vigilant in detecting and preventing human rights breaches, as mental wellness and further health professionals are occasionally the culprits of the violation of human rights. While it is those said professionals who violate a patient's rights, they should be subject to the full force of the law. All mental health professionals must take an active role in defending and advancing the rights of people with mental illnesses and in making sure that treatment facilities like mental hospitals don't routinely infringe on such rights. The government of Indonesia is expected to execute an effective risk communication, amplify the COVID-19 policies and commence mental health care systems by incorporating the smallest community within the environment to settle mental health prevention promptly.

There are actions that can be done to overcome mental problems in Indonesia, including:



- maintain personal health and to remain obedient and disciplined with health protocols so as not to contract COVID-19, and always maintain mental health by managing stress well, creating a safe, comfortable atmosphere for all family members in our homes.
- maintain health and preventing the transmission of COVID-19 and being dedicated
 to maintaining the mental health of the community, either through activities in the
 community or in health care facilities. in providing services and assistance for
 people who experience mental health problems, so that they get access to equal
 and equal services.
- government leaders, as supervisors and authorities in the regions, should focus of attention by providing various facilities and infrastructure related to adequate mental health and supporting the implementation of mental health programs in their area.
- 4. The media can provide balanced information related to mental health issues, so that it is expected to reduce stigma and increase information on the need for and access to mental health services as a prerequisite for equality of mental health services for all Indonesian people.

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