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Analysis of State Responsibility for Health Rights in Indonesia: Integrating Legal Positivism and Justice Theory

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ABSTRACT

This research examines the legal and moral dimensions of the state's responsibility for the right to health in Indonesia by synthesizing legal positivism and contemporary theories of justice. Focusing on Law No. 17 of 2023 on Health and the National Health Insurance scheme (*Jaminan Kesehatan Nasional*, *JKN*), the research argues that formal legal validity alone is insufficient to discharge the state's constitutional obligations. While Indonesia has constructed a procedurally coherent health law framework that satisfies positivist criteria of legality, significant gaps remain in the realization of substantive justice, particularly for disadvantaged populations. By juxtaposing H.L.A. Hart's conception of legal validity with John Rawls's theory of justice as fairness, this study demonstrates that the legitimacy of health law must be assessed not only by its formal pedigree but also by its distributive consequences. The research concludes that state responsibility for health rights requires an integrated approach in which legal positivism is complemented—and normatively corrected—by justice-based evaluation, thereby proposing a dual-threshold conception of state responsibility in health law that distinguishes legal validity from normative legitimacy through doctrinal analysis and normative institutional evaluation. This study conceptually reframes state responsibility for social rights as a dual-threshold structure in which formal legality constitutes a necessary condition of obligation, while distributive justice operates as an independent condition of legitimacy.

KEYWORDS theory of justice, legal positivism, state responsibility

INTRODUCTION

The right to health has long occupied a central position in Indonesia's constitutional architecture. Enshrined in the 1945 Constitution, it reflects the post-independence commitment of the state to social welfare and human dignity. Constitutional provisions explicitly recognize health not merely as an aspirational objective but as an enforceable entitlement that imposes affirmative duties on the state. This normative position has been operationalized through the establishment of the National Health Insurance system, administered by the Social Security Administering Body for Health, and most recently consolidated through Law No. 17 of 2023 on Health.

The National Health Insurance system occupies a distinctive position within this constitutional framework. *JKN* is not merely a mechanism for financing healthcare services; it is a hybrid legal institution that integrates fiscal redistribution, administrative governance, and principles of social solidarity (Finnis, 2011; Government of Indonesia, 2011; Government of Indonesia, 2023). Decisions regarding contribution levels, benefit design, service standardization, and provider distribution are simultaneously legal acts, budgetary choices, and moral judgments about collective responsibility (Ferraz, 2020; Flood & Gross, 2014). As such, controversies surrounding *JKN* policies cannot be reduced to technical questions of

administration. They reflect structural features of health governance that implicate the very meaning of state responsibility under a social-rights constitution (Mboi et al., 2018; Trisnantoro et al., 2019).

In comparative constitutional theory, social rights such as the right to health have often been characterized as programmatic or aspirational, imposing broad policy goals rather than directly enforceable obligations (Hart, 2012; Heywood & Harahap, 2019; Mæstad & Mwisongo, 2011). By contrast, contemporary constitutional developments increasingly recognize social rights as justiciable claims that generate affirmative duties for the state (Forman et al., 2016; Gauri & Brinks, 2020; Jung et al., 2014; Pieterse, 2014; Young, 2017). The distinction is not merely semantic. It concerns the depth of legal responsibility attributed to public authorities and the standards by which compliance is assessed. Where social rights remain programmatic, legality tends to be satisfied by the enactment of general frameworks (Van der Berg & Burger, 2010). Where rights are justiciable, however, the adequacy of implementation becomes a central constitutional concern (Harsono et al., 2020; Mahendradhata et al., 2017).

Indonesia's constitutional design reflects an ambitious commitment to the latter model. The textual formulation of health as a constitutional right does not frame it solely as a policy objective but as an entitlement accompanied by an explicit assignment of state responsibility (Yamin & Parra-Vera, 2019). At the same time, the institutional capacity required to translate this commitment into equitable outcomes remains uneven (Agustina et al., 2019; Pisani et al., 2017; Sparrow et al., 2017). This tension between normative ambition and institutional limitation renders a purely formal assessment of legality insufficient. A constitutional order that promises substantive protection cannot assess fulfillment solely by reference to procedural compliance.

Despite this comprehensive legal framework, persistent tensions arise between the formal validity of health legislation and its substantive impact on citizens' lived experiences. Policies such as adjustments to *JKN* contributions, standardization of inpatient care, and regulatory approaches to healthcare workforce deployment often spark social controversy. These disputes reveal a deeper theoretical problem: whether the state's responsibility for health rights is fulfilled once legally valid rules are enacted or whether it extends to ensuring that those rules operate fairly in practice, particularly for the least advantaged members of society.

This tension exposes a critical jurisprudential gap in social-rights scholarship: existing literature tends to analyze state responsibility either through the lens of legal validity (emphasizing procedural compliance and institutional coherence) or through normative justice frameworks (focusing on distributive outcomes) but rarely integrates both dimensions systematically. This article addresses that problem by situating Indonesian health law within a broader jurisprudential debate between legal positivism and theories of justice.

The urgency of this inquiry lies in the growing disconnect between Indonesia's expansive constitutional promises and the persistent inequities experienced by vulnerable populations under the *JKN* system. Recent policy controversies—including contribution increases affecting low-income participants, regional disparities in healthcare infrastructure, and the uneven implementation of service standardization—demonstrate that formal legal validity does not automatically translate into substantive justice. Without a coherent theoretical framework that

integrates legality and justice, constitutional adjudicators and policymakers lack clear criteria for evaluating when state responsibility has been genuinely fulfilled.

The analytical framework draws on H.L.A. Hart's account of legal validity and John Rawls's theory of justice as fairness to explore how formal legality and substantive justice interact, diverge, and ultimately condition the legitimacy of health governance in Indonesia. This research advances a distinct theoretical claim within that debate. Rather than treating legal positivism and justice theory as competing or mutually exclusive frameworks, it argues that they are structurally interdependent within the context of welfare-state health law. Legal positivism provides the conditions under which state obligations become legally intelligible and institutionally binding, while theories of justice supply the normative criteria by which the completion of those obligations can be evaluated. In systems where health is constitutionally recognized as a social right and operationalized through complex redistributive institutions, formal legality cannot plausibly function as the terminus of state responsibility. Instead, legality and justice operate as complementary dimensions of legitimacy.

The central contribution of this research lies in articulating an integrative account of state responsibility for the right to health—one that preserves the analytical clarity of positivism while subjecting its institutional outputs to justice-based evaluation. The analysis is intentionally normative and jurisprudential rather than empirical, focusing on institutional justification rather than outcome measurement.

These institutional realities raise a fundamental question of legal theory. In the domain of social rights, can state responsibility be exhausted by the enactment of formally valid rules, or does responsibility necessarily extend to the distributive effects those rules generate within society? When the law structures access to healthcare, allocates risk, and shapes opportunity, the boundary between legality and justice becomes increasingly difficult to sustain. It is this question—located at the intersection of jurisprudence and welfare governance—that frames the analysis undertaken in this research.

Although grounded in the Indonesian legal system, the argument developed here engages a broader problem faced by welfare states that constitutionalize health as a social right while governing it through complex administrative and fiscal institutions. The Indonesian case serves as a paradigmatic example of how formal legality can coexist with persistent distributive injustice in social-rights regimes. For that reason, the analysis is intended not as a country-specific critique but as a contribution to general jurisprudential debates on state responsibility, legitimacy, and justice in health governance.

Against this backdrop, the research addresses three interrelated research questions: (1) Can formal legality under Hartian legal positivism exhaust the constitutional responsibility of the state for the right to health, once a procedurally valid health law framework has been enacted? (2) How does Rawls's theory of justice as fairness recalibrate the evaluative threshold for legitimacy in welfare-state health law, particularly with respect to distributive outcomes affecting the least advantaged? (3) Does an integrated dual-threshold framework, distinguishing legal validity from normative legitimacy, offer a more coherent doctrinal account of state responsibility for social rights than approaches that treat legality and justice as sequential or separable stages of analysis?

Existing Indonesian and comparative health-law scholarship has largely addressed legality and justice as parallel or subsequent concerns, leaving the normative structure of state

responsibility for social rights under-theorized at the level of jurisprudential integration. Existing health-law scholarship tends to treat legality and justice either as analytically separable domains or as sequential stages of evaluation, thereby obscuring how responsibility is constituted within law itself. This research intervenes at that conceptual level by theorizing legality and justice as co-constitutive dimensions of legitimacy in social-rights governance.

METHOD

This research adopted a doctrinal normative methodology situated within jurisprudential analysis. Primary sources consisted of constitutional provisions, statutory texts—particularly Law No. 17 of 2023 on Health—and canonical legal theory, including the works of H.L.A. Hart, John Rawls, and subsequent Rawlsian scholarship on health justice. The analysis evaluated the normative structure of state responsibility as articulated through law and legal institutions, without measuring empirical health outcomes.

Theoretical frameworks were integrated through three analytical stages. First, Hartian legal positivism established the conditions of formal validity in Indonesian health law. Second, Rawlsian justice theory evaluated the distributive consequences of those policies, particularly their impact on the least advantaged populations. Third, the frameworks were synthesized into a dual-threshold model that treated legal validity and distributive justice as co-constitutive dimensions of state responsibility.

This methodological approach intersected with practical health governance through normative institutional evaluation. Rather than prescribing specific policy reforms, the framework equipped constitutional interpreters, legislators, and administrators with criteria for assessing whether health laws satisfied both legality and justice thresholds. For instance, evaluating JKN contribution policies required assessing not only procedural authorization (positivist validity) but also whether contribution structures systematically disadvantaged low-income populations (justice-based legitimacy).

Indonesia served as a paradigmatic case of welfare-state health governance in the Global South, where constitutional commitments to social rights operated alongside complex administrative and fiscal institutions. The Indonesian experience illuminated the tension between formal legality and substantive justice, while the methodological contribution offered a transferable framework for assessing state responsibility in social-rights regimes beyond the Indonesian context.

RESULTS AND DISCUSSION

Legal Positivism and Formal State Responsibility

Legal positivism, as articulated by H.L.A. Hart, offers a precise account of what constitutes a valid legal system. In Hart's framework, the validity of law depends on social sources and institutional procedures rather than moral merit. A functioning legal system consists of primary rules that impose obligations and secondary rules that regulate the creation, modification, and adjudication of those primary rules. Central among the secondary rules is the rule of recognition, which supplies authoritative criteria for identifying what counts as law within a given legal order.

Applied to Indonesian health law, Hart's theory provides a compelling explanation for the state's formal compliance with constitutional mandates. Law No. 17 of 2023 was enacted through constitutionally prescribed legislative procedures and is anchored in statutory authority traceable to the Constitution. From the standpoint of the rule of recognition, there is little doubt that the law is valid. It establishes binding obligations concerning healthcare provision, financing, administration, and professional regulation, while also setting out institutional mechanisms for governance and oversight.

In the context of Indonesian health law, the operation of the rule of recognition extends beyond the constitutional validation of statutes. It also structures the authority of delegated legislation, ministerial regulations, and the administrative rules issued by BPJS for Health. Each regulatory layer derives its validity from its conformity to higher-order norms, creating a cascading structure of legal authority. From a Hartian perspective, this hierarchical coherence confirms that the health system operates within a unified legal order. Yet this same coherence reveals a limitation: once validity is established at each level, positivism offers no internal criteria for assessing whether the resulting regulatory outcomes are fair or equitable.

Existing positivist analyses of social rights, particularly those influenced by Hartian administrative legality, tend to emphasize institutional coherence, procedural authorization, and compliance with hierarchies of norms as the primary indicators of state responsibility. By contrast, Rawlsian and post-Rawlsian treatments of health justice often remain normatively abstract, offering rich moral critique but limited engagement with the internal logic of legal validity and institutional operation. Indonesian health-law scholarship, meanwhile, has largely focused on statutory compliance and administrative design, stopping short of a jurisprudential evaluation of how legality and justice jointly condition constitutional responsibility.

This research departs from these approaches by advancing an integrated framework in which positivist legality and justice-based evaluation are treated not as competing perspectives, but as co-constitutive dimensions of legitimacy in social-rights governance.

Within this positivist perspective, the state may plausibly be said to have fulfilled its legal responsibility. The enactment of a comprehensive health statute, supported by implementing regulations and administrative institutions, satisfies the procedural criteria that define legal obligation. Questions concerning the fairness of premiums, the adequacy of services, or regional disparities in access are, in Hart's terms, external moral critiques rather than determinants of legal validity. An unjust law may still be law, and a legally sound system may nonetheless produce morally troubling outcomes. Legal validity, in this sense, does not presuppose social acceptance or perceived fairness, but merely institutional recognition within the rule-governed system.

Hart's emphasis on secondary rules also illuminates how health law adapts and responds to change. Rules governing legislative amendment, regulatory revision, and administrative adjustment provide mechanisms for modifying policies such as JKN contribution levels or benefit schemes over time. Similarly, rules of adjudication enable courts or administrative bodies to review disputes over coverage, entitlement, and administrative decisions. These mechanisms enhance legal certainty and institutional continuity. However, they do not address whether the substantive direction of change systematically disadvantages certain social groups. Procedural adaptability, on its own, cannot correct distributive imbalance.

Hart's insistence on the conceptual separation between law and morality is analytically valuable, particularly in pluralistic societies where moral consensus is elusive. However, this separation also exposes a limitation: by bracketing distributive outcomes from the assessment of legality, legal positivism risks endorsing a form of institutional minimalism in which state responsibility is reduced to rule-making rather than rights realization.

The limitations identified here do not diminish the analytical importance of legal positivism. On the contrary, Hart's framework remains indispensable for distinguishing legal obligation from moral aspiration, clarifying institutional authority, and preserving legal certainty within pluralistic societies. Without a positivist account of validity, critiques of injustice risk collapsing into indeterminate moral disagreement. The challenge, therefore, is not to abandon positivism but to recognize its limits when law is tasked with structuring distributive outcomes, such as access to healthcare.

Hart acknowledged that any viable legal system must incorporate a minimal content of natural law, rooted in basic human vulnerabilities and the need for social survival. While this concession introduces a moral dimension into positivist theory, its scope remains limited. The minimal conditions required for survival do not encompass questions of distributive justice, equality of access, or fair opportunity. In the field of health law, where inequality often manifests not as absolute deprivation but as systematic disadvantage, this minimal moral threshold proves insufficient. It is precisely at this point that justice-based theories become indispensable.

Justice as Fairness and Substantive Evaluation

In contrast to Hart's formalism, John Rawls's theory of justice evaluates social institutions according to their fairness and their consequences for human life prospects. Justice, for Rawls, is the first virtue of social institutions, and legal structures must be assessed by how they distribute fundamental goods, including health. Rawls's hypothetical original position and veil of ignorance are designed to abstract from contingent social advantages, compelling decision-makers to adopt principles that protect individuals regardless of their eventual position in society.

From a Rawlsian standpoint, health occupies a pivotal, if somewhat indirect, role within the basic structure of society. While Rawls did not initially list health as a primary good, subsequent interpretations, notably by Norman Daniels, have demonstrated that health is foundational to fair equality of opportunity.

Subsequent Rawlsian scholarship, most prominently the work of Norman Daniels, has clarified the centrality of health to the theory of justice. Daniels argues that protecting health preserves individuals' normal range of opportunities, thereby securing the background conditions necessary for fair equality of opportunity. On this account, health institutions form part of the basic structure of society in the Rawlsian sense. Legal arrangements governing healthcare access are therefore not peripheral policy choices but foundational components of distributive justice. This insight has profound implications for evaluating state responsibility in health law.

Viewed through this lens, the JKN system embodies a commendable normative ambition. It aspires to universal coverage and social solidarity, reflecting a collective commitment to

mutual protection. Yet Rawlsian analysis compels closer scrutiny of how this system affects the least advantaged. Policies concerning premium contributions, service limitations, and standardization must be judged by whether they improve, or at least do not worsen, the situation of those who are poorest, sickest, or most geographically marginalized.

Several structural tensions emerge under this analysis. The standardized inpatient class policy, while formally egalitarian, confronts deep disparities in hospital capacity and infrastructure. In the absence of substantial investment in underdeveloped regions, standardization risks producing nominal equality without meaningful equivalence in care quality. Similarly, contribution requirements that impose uniform financial obligations may disproportionately burden low-income households, thereby undermining access rather than promoting inclusion. Persistent concentration of healthcare professionals in urban centers further entrenches unequal life chances, violating both distributive justice and fair equality of opportunity.

From this perspective, specific features of the Indonesian health system can be evaluated as expressions—successful or otherwise—of Rawlsian principles. Financing mechanisms implicate the difference principle, insofar as they determine how burdens are shared across social groups. The distribution of healthcare infrastructure and personnel directly affects fair equality of opportunity. Standards governing inpatient care and service access bear on the priority accorded to basic rights and liberties.

These shortcomings are not merely administrative inefficiencies. They represent normative failures within the basic structure, insofar as the legal framework permits or fails to sufficiently correct systematic disadvantages that predictably fall upon vulnerable populations.

Integrating Formal Legality and Substantive Justice

This section articulates the research's central theoretical contribution. The research advances a dual-threshold conception of state responsibility for social rights, under which formal legal validity constitutes a necessary condition for obligation, while distributive justice operates as a distinct and indispensable condition of legitimacy. Unlike Hartian positivism, which brackets distributive outcomes from legal assessment, and unlike Rawlsian accounts that often bypass the internal criteria of legal validity, this framework preserves analytical clarity while enabling normative evaluation of institutional effects. The model is designed to inform constitutional interpretation and legislative design in welfare-state health systems where law structures access to essential goods and life chances. Unlike approaches that frame justice as an external moral critique of law, the dual-threshold model conceptualizes distributive impact as an internal condition of legitimacy within social-rights legal orders.

An integrated evaluation of state responsibility for the right to health requires moving beyond sequential analysis in which legality is assessed first and justice considered only as a secondary critique. In welfare-state contexts, legal validity constitutes a necessary condition for state action, but distributive impact functions as a condition of legitimacy. A health law framework may be constitutionally valid and procedurally coherent while simultaneously failing to satisfy the demands of justice embedded in the constitutional order itself. This dual-threshold approach does not collapse law into morality, nor does it subordinate justice entirely to institutional form. Instead, it recognizes that in social-rights regimes, legality and justice jointly define the scope and fulfillment of state responsibility.

This integrative approach does not authorize courts or policymakers to invalidate law solely on moral disagreement, nor does it convert justice theory into a source of legal validity. The framework is primarily addressed to lawmakers and constitutional interpreters who must evaluate whether formally valid health regimes satisfy the deeper justificatory demands of social rights.

Formal Legality and Substantive Justice in Tension

The enactment of Law No. 17 of 2023 crystallizes the tension between formal legality and substantive justice in Indonesian health governance. From a positivist perspective, the law is unassailable in terms of validity. From a justice-oriented perspective, it reveals unresolved conflicts between legal form and social reality. Financing mechanisms grounded in mutual cooperation coexist uneasily with economic inequality. Regulatory mandates for service standardization struggle against persistent infrastructural asymmetries. Statutory guarantees of patient rights confront bureaucratic practices that often dilute their practical effectiveness.

This disjunction between law as written and law as experienced has significant implications for legitimacy. The legitimacy at stake here is not legal validity, but sociopolitical legitimacy grounded in perceived fairness and inclusion. When citizens encounter a system that is legally authoritative yet substantively exclusionary, trust erodes. Compliance becomes fragile, not because the law lacks force, but because it lacks moral resonance. In this sense, substantive injustice does not invalidate law in a positivist sense, but it does weaken the social foundations upon which effective governance depends.

CONCLUSION

This research demonstrated that state responsibility for the right to health requires a dual-threshold model integrating H.L.A. Hart's legal positivism—which establishes formal validity as a necessary condition—with John Rawls's theory of justice as fairness, which evaluates equitable distributive impacts, particularly on the least advantaged. The Indonesian case revealed how legally comprehensive health systems like *JKN* can satisfy procedural constitutionality yet remain morally deficient in substantive outcomes, underscoring that welfare-state governance demands assessment beyond rule validity to include justice-based legitimacy. Future research could empirically test this framework through comparative studies of how courts, legislatures, and agencies in Indonesia and other Global South jurisdictions operationalize distributive justice in health policy areas like premium equity and infrastructure, while extending it to other social rights such as education and housing to assess transferability.

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