



Research Article

Arrangement Urgency of *Medical Tourism* Implementation at Bali Mandara Hospital

I Nyoman Bagiastira*,

*Doctoral Program of Legal Science, Law Faculty, Udayana University, Indonesia

Corresponding author email: nyoman_bagiastira@unud.ac.id

Abstract

Policy arrangement and a good regulation related to medical tourism at Bali Mandara Hospital that was planned to operate in 2017 are extremely significant to do in order to minimize legal issues after being applied. Bali Mandara Hospital is an international-based health service facility managed by Bali Provincial Government. This international-based hospital's superiority is medical tourism application. It is known that Bali has a huge comparative aspects to make as tourism destination either in national scale or international scale. Bali has the most-known geographical area by tourists because it has special cultural characteristics. Thus, understanding about Tourism Law philosophically, epistemologically, and axiologically is the main factor, especially for policy maker in determining the success of sustainable tourism development. Collaboration between tourism sector and health sector are the most possible thing to do, but in implementation process, clear regulation is really needed. Therefore, Bali is better to make a local regulation especially for the collaboration.

Keywords: arrangement; medical tourism; Bali Mandara Hospital.

Introduction

Tourism genuinely is not only related to economics aspects, but also it is related to health, social, culture and environment protection issues. It is because it invites people from different social status and cultural background to consume nonrenewable resources in tourism destination. It can be also stated that tourism sector is related to all aspects of society's life with its potential issues. Thus, the best illustration can be expressed by this: "*Tourism is like fire. It can cook your food or burn your house down*" (Cronin, 2004).

Modern era development nowadays shows that tourists not only enjoy conventional tourism, like the nature and so on, but also today's tourism trend is touring while having health therapy. This is called Medical tourism. Its terms are various, such as medical travel, health tourism, health travel, medical value travel, healthcare abroad, medical overseas, overseas medical, surgery overseas, medical outsourcing and offshore medical. Medical tourism means tour had by someone to other countries to look for medical treatment. The patient who does it called medical tourist.

The medical treatment expected by the tourists actually is available in their country. However, because of some reasons, they prefer to have medical treatment abroad. There are five factors why this happens, quoted from *SQU Medical Journal*, which are: affordable price, medical treatment type availability, medical treatment easiness, acceptable medical treatment and other additional reasons. The affordable price is probably the main of a patient to look for medical treatment abroad.

Affordable price while touring are the main reason why the patient looking for medical treatment abroad. Medical treatment type availability is the second reason. This has two meanings: no type of medical treatment expected by the patients in their country or the type of medical treatment expected by the patients available in their country but they do not put the trust on it. Two reasons become the triggers of someone goes abroad to look for medical treatment. The third reason is combining both reasons: touring while having medical treatment.

If medical treatment is formulated in a calculation, then the formula in Tourisms is given in box below (Source: *An International Multidisciplinary Journal of Tourism*)

Medical and Healthcare Services + Tourism and Travel Services + Support Services = **MEDICAL TOURISM**

Besides some benefits obtained, medical tourist in destination country has some potential medical tourism risks. In the article of *The Ethics of Medical Tourism Company*, Websites written by Katherine Wertz and Magdalena Berry, mentioned that there are some potential risks in medical tourism implementation. These should be anticipated and good preparations are needed.

Bali as the most famous tourism destination through Bali Mandara Hospital, which will operate in 2017, has special program in healthcare service by applying medical tourism concept. Then, Bali provincial government should prepare clear regulation and policy in its implementation. This is important to do to prevent legal issues that may cause Bali's image as tourism destination get worse, so that it can give negative impact in international view and it can influence sustainable Bali tourism.

This research is significant to do to know how far Bali government's preparation on regulation in implementation medical tourism at Bali Mandara Hospital, and what policy plan that should be set in arranging the regulation.

Statements of Problem

1. Has Bali government prepared arrangement in medical tourism implementation at Bali Mandara hospital?
2. How are policy forms and arrangements of medical tourism implementation at Bali Mandara hospital?

Research Purpose

The purposes of this research are:

General Purposes

To find theoretical thought about Arrangement Urgency of *Medical Tourism* Implementation at Bali Mandara Hospital.

Specific Purposes

1. To find Bali government's preparation related to arrangement of medical tourism implementation at Bali Mandara hospital.
2. To find policy forms and arrangement of medical tourism implementation at Bali Mandara hospital.

Research Significances

Theoretical Significance

A good arrangement of medical tourism implementation at Bali Mandara hospital will give legal certainty on its implementation.

Practical Significance

Holistic law purposes are expected to achieve in order to implement *Medical Tourism* at Bali Mandara hospital to actualize sustainable tourism as the collaboration effort of tourism and health aspect.

Theoretical Framework

Law System Theory improved by Friedman (1975), Hart (1972), Conttrel (1992), and Raz (1979). It is used as theoretical framework of this research because medical tourism arrangement at Bali Mandara hospital will be actualized well if considering that law is a system consisting of substance, structure, and legal culture, which are internally based on basic norms, and externally based on the work of the system, which cannot be separated with society as its basis.

Hart's concept of Legal requires two minimum conditions as its existential requirements, which are:

"One minimum condition, therefore, for a legal system to be in existence is that the rule of recognition, and the other secondary rules are accepted as binding by those officials having the tasks within the legal order of creating, changing, interpreting, applying, enforcing, or advising on legal rules. The other minimum condition for a legal system to exist is that citizens, in general, regularly obey the primary rules. Obedience merely because of the fear of punishment would be sufficient" (Hart, 1972; Samford, 1989).

Next, Conttrel (1992) in Hart (1972) explains that

"...Unity in law as practical matter entails two things; it entails predictably consistent internal relationships of element (rules, principles, concepts, decisions, etc.) within a legal system. Equally, it entails predictably consistent external relationships between the system and what lies outside it".

The next theories are *Contract Theory* and *Undertaking Theory*. Its basis is the legal relationship between healthcare services like hospital, doctor, and patients. Thus, this theory will be used to relate and analyze the legal relationship among hospital, doctor, and patient in medical tourism implementation at Bali Mandara hospital.

Rawls (1999) emphasizes the importance of all parties, involving in discussion process to select justice principles, is in the primary condition called *the original position*. In his viewpoint, this imaginary primary condition should be considered and accepted because by doing these ways, justice implementation as pure procedure can be conceived. However, because it is imaginary, then Hary believes that the original position should be the requirement to make a justice concept aiming to ensure that all parties' interests are accommodated fairly (Rawls, 1999).

Legal system theory (substance, structure, culture), *Undertaking Theory*, *John Rawls's Justice Theory* will be used as analyzing theory to explore Arrangement

Urgency of *Medical Tourism* Implementation at Bali Mandara hospital.

Research Method

This research used normative legal research method which means that the legal research is conducted by observing library materials or secondary data (Soekanto and Mamudji, 2007). Normative Legal research discusses law considered as norm in society and discusses behavior reference of society. Normative Legal research is a doctrinaire legal research which is also called literature study or document study (Waluyo, 2008).

Then, related to the data collection and information based on fact and practical reality in society dealing with medical tourism implementation at Bali Mandara hospital (*das sein*), this research not only focused on conceptual and normative discussion, but also on empirical research method in form of *unobtrusive research*. Method of “unobtrusive research” briefly means a research method done without contacting or disturbing the research subject and it is only based on the available documents only (Singleton Jr, 1988; Denzin and Lincoln, 1994; Bailey, 1982; Babbie, 1998). The use of *unobtrusive research* method is not done structurally, but it is based on *content analysis* and/or *historical/comparative analysis* from reports and/or discussion result from organizations or institutions either owned by government or owned by society in health aspect, especially related to medical tourism in the world, Indonesia, or Bali as well as based on scientists’ opinions in some mass media.

Results

Arrangement of Medical Tourism Implementation at Bali Mandara Hospital

Based on Memorandum of Understanding of Ministry of Health and Ministry of Culture and Tourism Number 412/Menkes/SKB/XI/2012 and Number NK/30/PW.202/MPEK/2012 regarding Health Tourism continued with Cooperation Agreement between Ministry of Health and Ministry of Culture and Tourism Number HK.05.01/IV/2495/2013 and PK 11/KS.001/Sekjen/KPEK/2013 regarding Health Tourism Development, assigned that Medical Tourism is the part of Health Tourism (Indonesian Ministry of Health, 2015).

Medical Tourism simply means that tour aimed to improve someone’s health. Medical Tourism at least involves two sectors: tourism and health sectors. Society in developed country prefer to not have health treatment offered in their country and prefer to tour to developing countries to get medical services. This phenomenon is caused by market willingness and happens out of health system control. Medical tourism becomes an attention and important challenge, but on the other hand, it is a potential chance as well (Indonesian Ministry of Health, 2015).

Indonesia nowadays has a rapid tourism development along with global industry development. Indonesia’s tourism sector has some potential to grow, such as: cultural and religious tourism as well as natural tourism. According to Central Bureau of Statistics in 2015, the total of international tourist visit on December 2014 is 915.334 people or it increases 6% compared to previous year (Indonesian Ministry of Health, 2015).

Then, regulation of Health Minister of the Republic of Indonesia Number 76 in 2015 regarding to Medical Tourism Service is made. It means that Indonesia has owned regulation related to *medical tourism*.

Regarding to medical tourism implementation at Bali Mandara hospital in Bali, from the researcher’s observation, a clear regulation and local regulation policy of the medical tourism implementation are not found. It is strengthened by the statement of Governor of Bali, Mangku Pastika “According to him, there are still many tourism objects in Bali which are not developed yet and those interest tourists. Regarding to Governor Pastika as Local Regulation of Bali Tourism, it is the time to be renewed since the present condition is really different from when the local regulation is made. Thus, Governor Pastika expects supports from stakeholder to give a solution or Bali tourism development in the next future” (Balipro, 2017).

Policy Forms and Arrangement of Medical Tourism Implementation at Bali Mandara Hospital

According to the article entitled *The Ethics of Medical Tourism Company Websites* written by Katherine Wertz and Magdalena Berry, it is stated that there are risks of medical tourism implementation.

The risks are the insurance that does not cover international medical treatment. Medical insurance owned by patients or insurance from the patients’ country probably does not cover international medical treatment. This makes patients to pay additional cost. The next is *Post-Surgery Side Effect*; in surgery procedure, it probably will have post-surgery side effect which is just known by patients after going back to their country. To solve it, it will mind the patients if they should go back to the country where they get the treatment. The side effect also can be from medicine given by the doctor. Besides, the follow up of post medical treatment in the foreign country is quite low. If the post-surgery problems happen, it is difficult to handle optimally. The helps toward malpractice; some countries offering interesting medical procedure only can give few helps if malpractice occurs on foreign patients. The fact shows that Indonesia still does not have regulations regarding malpractice. It will be a big block if Bali Mandara hospital implements medical tourism later. Getting virus in destination country of medical treatment; besides bringing souvenirs from destination country of medical treatment, if

the patients have low body immune, they will also bring virus from the country.

Communication Discrepancy

When doing medical tourism, a medical tourist must be able to communicate in international language. Sometimes, foreign language proficiency of medical tourist is not that good, so that it makes them difficult to communicate with doctor. If the communication is just difficult, then the information got by medical tourist cannot be understood optimally. After getting surgery, the patients should take an optimal rest in house. However, foreign patients cannot do the same way. After getting medical treatment, especially surgery, foreign patients should take a long tour to arrive in house and take an optimal rest.

Those are the basis in making policies and arrangements of medical tourism implementation at Mandara Bali hospital.

Discussion

From the research exploration, it is found that consideration and preparation are needed to implement medical tourism at Bali Mandara hospital. A significant economics increase is not only the reason to implement medical tourism, but also all forms of regulation and policy toward negative risk of medical tourism should be prepared.

Regulation or Law can be used as arrangement instrument. Law existence aims to integrate, coordinate, limit, and protect some interests in society (Fitzgerald, 1966). So, a law has function to regulate, control, synergize, and coordinate in order to protect some interests of society. Furthermore, the meaning of "laws" is regulation in medical tourism implementation at Bali Mandara hospital. In this research, according to Friedman (1975), legal concept as a system has three interacting components: legal substances (principles and norms), legal structure (institutional levels), and legal culture (an idea, view, and society normative behavior).

Next, according to King Jr. (1977), there are two legal theories which support relationship between doctor and patient: *Contract Theory* and *Undertaking Theory*. Moreover, in *Contract theory*, if a doctor agrees to take care of someone with certain fee, then contractual arrangement is made with rights and obligations. While according to *Undertaking Theory*, if a doctor volunteers to give a treatment to someone, then the relationship between doctor and patient is made in most medical services including a situation which is not covered by a contract. Besides, there is also an incidental relationship which is if a doctor is paid by a person who is not the service recipient (King Jr, 1977) This theory should be the base of regulation arrangement of medical tourism implementation at Bali Mandara hospital.

The next theory is John Rawls' Justice Theory. Rawls (1999) emphasizes the vital position of a fair procedure in

order to get decisions in which everyone can accept it as fairness. The fair procedure only can be fulfilled if discussion culture is there which possibly results a decision which can ensure a fair distribution on rights and regulations. Medical treatment implementation at Bali Mandara hospital should prioritize justice concept toward patient, doctor, and hospital. Since Indonesia still does not have Malpractice Regulations, thus it will be a difficulty to make a holistic justice in medical treatment implementation at Bali Mandara hospital.

Referring to those theories, then further discussion regarding to the concept of arrangement and policy in managing local regulation in medical treatment implementation can be concluded that Bali Mandara hospital is needed from either substances, structures, culture, or contract relationship among patient, doctor, and hospital. It is also for achieving the law purpose itself: justice.

Conclusion and Suggestions

1. From the observation and further research by accessing data from Provincial Office of Bali, preparation in form of regulation forms and comprehensive policies regarding to medical tourism implementation at Bali Mandara hospital is not found yet.
2. Since all potential risks in implementing medical tourism like insurance, malpractice issue, human resources, hospital preparation and virus infection possibility as medical tourism negative effects, therefore Bali government should make a strict and a clear regulation to implement sustainable tourism development especially in Bali.
3. As a suggestion for Bali Government regarding to medical tourism implementation at Bali Mandara hospital which is planned to operate in 2017, detail and comprehensive regulations and policies should be set.
4. If Bali Mandara hospital is willing to positively implement medical tourism, then it needs to anticipate all potential risks immediately in order that it can be constructed juridical in form of local regulation and policy of Bali. It is considered important to prevent the unexpected things, which can harm tourism of Bali in the future.

References

- Babbie E (1998) *The Practice of Social Research*, Eight Edition. Wadsworth Publishing Company USA.
- Bailey KD (1982) *Methods of Social Research*, Second Edition. The Free Press New York.
- Baliprov (2017). *Tidak Sekedar Promosi*, Gubernur Pastika Tekankan Bali Perlu Destinasi Wisata Baru. (Online). <http://www.pe.wakilan.baliprov.go.id/id/TIDAK->

SEKEDAR-PROMOSI--GUBERNUR-PASTIKA-
TEKANKAN-BALI-PERLU-DESTINASI-WISATA-
BARU. Accessed on February 18, 2017.

- Contrell R (1992) *Jurisprudence: A Critical Introduction to Legal Philosophy*. University of Pennsylvania Press.
- Cronin PM (2004) Foreign Aid. In: Cronin AK and Ludes JM (Eds) *Attacking Terrorism: Elements of a Grand Strategy*. Washington, D.C.: Georgetown University Press, 254.
- Denzin NK and Lincoln YS (1994) *Handbook of Qualitative Research*. Sage Publications London.
- Fitzgerald JP (1966) *Salmond on Jurisprudence*, Sweet & Maxwell London.
- Friedman LM (1975) *The Legal System: A Social Science Perspective*. Russell Sage Foundation New York.
- Hart HLA (1972) *The Concept of Law*. The English Language Book Society and Oxford University Press.
- Indonesian Ministry of Health (2015) Regulation Number 76 Year 2015 About Medical Tourism Service.*
- King Jr JH (1977) *The Law of Medical Malpractice in a Nutshell*. West Publishing Co St. Paul Minn.
- Rawls J (1999) *A Theory of Justice (Revised Edition)*. The Belknap Press of Harvard University Press.
- Raz J (1979) *The Authority of Law*. Oxford Clarendon Press.
- Samford C (1989) *The Disorder of Law: A Critique of Legal Theory*. Basil Blackwell, Oxford-UK, New York-USA.
- Singleton Jr. R (1988) *Approches to Social Research*. Oxford University Press.
- Soekanto S and Mamudji S (2007) *Normative Law Research of A Brief Review*. Raja Grafindo Persada Jakarta.
- Waluyo B (2008) *Legal Researrch in Practice*. Sinar Grafindo Jakarta