



Legal Inconsistency over Blood Donor Unit and Blood Transfusion Unit Existence in Transfusion Services Authority

I Made Wirya Darma¹, I Gede Agus Kurniawan², Gede Eka Rusdi Antara³

¹Faculty of Law Universitas Pendidikan Nasional, E-mail: wiryadarma@undiknas.ac.id

²Faculty of Law Universitas Pendidikan Nasional, E-mail: gedeaguskurniawan@undiknas.ac.id

³Digestive Surgeon at Sanglah Government Hospital, E-mail: dr_rusdi@yahoo.com

Article Info

Received: 15th July 2021

Accepted: 10th May 2022

Published: 12th May 2022

Keywords:

Blood Donor Unit; Blood Transfusion Unit; Blood Transfusion Service Duties; Health; Red Cross

Corresponding Author:

I Gede Agus Kurniawan, E-mail: gedeaguskurniawan@undiknas.ac.id

DOI:

10.24843/JMHU.2022.v11.i01.p05

Abstract

This study specifically focusing on uncertainty and inconsistencies that faced on blood transfusion services caused by the existence of Blood Donor Unit and Blood Transfusion Unit led by existing norms on the statutory laws. The Act on Health, the Blood Service Government Regulation, and the Minister of Health Regulation No. 83/2014 assign blood services to the Blood Transfusion Unit. However, the existence of the Red Cross Law along with the Red Cross Government Regulation normalizes the task of providing blood services to the Blood Donor Unit, without confirming legal certainty for the Blood Transfusion Unit. This has triggered the issue of legal inconsistency towards those who carry out blood services, so a solution is needed through this study. This study is based on normative juridical legal research supported by a statutory approach as well as a legal conceptual approach. The results of this study are there are two options that can be formulated in the future, namely by basing the principle of legal preference *lex posteriori derogate legi priori* or based on the technique of formulating statutory norms according to the principle of clarity of formulation, certainty of the formulation of explanations, transitional provisions, closing provisions and phrases that selected in determining the executor of blood service duties.

1. Introduction

The health became one of the fundamental and basic needs for humankind,¹ that recognized by international community with several international legal instruments.² These instruments emphasize that health as the fundamental rights and shift any obligation that should be taken by state to realize the highest attainable standard of

¹ Iman Jauhari, "Kesehatan Dalam Pandangan Hukum Islam," *Kanun Jurnal Ilmu Hukum* 13, no. 3 (2011): 33-58.

² United Nations Centre for Human Rights and United Nations. Office of the High Commissioner for Human Rights, *Human Rights: Universal Instruments*, vol. 1 (United Nations Publications, 2002). p. 12

health,³ including stable condition to ensuring medical concerns and services with aims as a concrete framework in supporting health system model with highest standard, professionalism, and comprehensiveness by any countries in the world.⁴

This noble purpose was supported within national legal frameworks as reflected in Constitution, Act, or statutory laws.⁵ Indonesia also accommodating health issues in the Preamble of 1945 Indonesia Constitution with placing health issues into national vision that implemented within sustainable and comprehensive development efforts⁶ including health development,⁷ based on rights to health and state obligations to realize highest attainable standard of health under international or national standards.⁸ This arrangement cannot be separated with welfare state conception within Pancasila, the Preamble of 1945 Indonesia Constitution, and Article 28H par. (1) the 1945 Indonesia Constitution that implemented in further details in national Laws or regulations related with health sector.⁹ This arrangement within law instrument has aims to create certainty framework in realizing health standard degree,¹⁰ and also it would be adjustment instrument towards international consensus for adsorption or adoption of international instrument into national laws.¹¹

The common concerns to realize highest attainable of health standards is placed as fundamental framework of health and human rights relationship that implemented with systemic, comprehensive, and sustainable framework.¹² The realization of these

³ Peter Hall, "The Right to the Highest Attainable Standard of Health," *The Lancet* 386, no. 9995 (2015): 738–39, [https://doi.org/https://doi.org/10.1016/S0140-6736\(15\)61535-5](https://doi.org/https://doi.org/10.1016/S0140-6736(15)61535-5).

⁴ Lawrence O Gostin, "Health of the People: The Highest Law?," *Journal of Law, Medicine & Ethics* 32, no. 3 (2004): 509–15, <https://doi.org/https://doi.org/10.1111/j.1748-720X.2004.tb00164.x>.

⁵ I Dewa Made Suartha, Hervina Puspitosari, and Bagus Hermanto, "Reconstruction Communal Rights Registration in Encouraging Indonesia Environmental Protection," *International Journal of Advanced Science and Technology* 29, no. 3 (2020): 1277–93.

⁶ I Ketut Cahyadi Putra and Ketut Cahyadi, "Relevansi Konsep Negara Hukum Pancasila Dengan Welfare State Dalam Implementasinya Dengan Pelayanan Publik Di Indonesia," *Jurnal Magister Hukum Udayana* 6, no. 1 (2017): 1–12, <https://doi.org/https://doi.org/10.24843/JMHU2017.v06.i01.p01>.

⁷ Rif'atul Hidayat, "Hak Atas Derajat Pelayanan Kesehatan Yang Optimal," *Syariah: Jurnal Hukum Dan Pemikiran* 16, no. 2 (2017): 127–34, <https://doi.org/http://dx.doi.org/10.18592/sy.v16i2.1035>.

⁸ Nyoman Mas Aryani and Bagus Hermanto, "Gagasan Pengaturan Yang Ideal Penyelesaian Yudisial Maupun Ekstra Yudisial Pelanggaran Hak Asasi Manusia Di Indonesia," *Jurnal Legislasi Indonesia* 15, no. 4 (2018): 369–83, <https://doi.org/https://doi.org/10.54629/jli.v15i4>.

⁹ Hernadi Affandi, "Implementasi Hak Atas Kesehatan Menurut Undang-Undang Dasar 1945: Antara Pengaturan Dan Realisasi Tanggung Jawab Negara," *Jurnal Hukum Positum* 4, no. 1 (2019): 36–56, <https://doi.org/https://doi.org/10.35706/positum.v4i1.3006>.

¹⁰ Titon Slamet Kurnia, *Hak Atas Derajat Kesehatan Optimal Sebagai HAM Di Indonesia* (Alumni, 2007).

¹¹ I Gede Yusa, Bagus Hermanto, and Nyoman Mas Aryani, "No-Spouse Employment and the Problem of the Constitutional Court of Indonesia," *J. Advanced Res. L. & Econ.* 11 (2020): 214, [https://doi.org/https://doi.org/10.14505/jarle.v11.1\(47\)26](https://doi.org/https://doi.org/10.14505/jarle.v11.1(47)26).

¹² Paul Hunt, "The Health and Human Rights Movement: Progress and Obstacles," *Journal of Law and Medicine* 15, no. 5 (2008): 714–24.

standards is based on state obligations, health good practices,¹³ and certainty of fulfillment state obligations and state responsibility.¹⁴ This recognition and stipulation into positive law related with highest attainable of health cannot be separated with health resources availability as an important elements of comprehensive health system. It should be supported with state progressive response to decide effective and efficient measurements to increasing health resources availability based on government indicators or benchmarks.¹⁵

Alfredsson and Tomasevski explained the relationship between health and human rights are related with three aspects including health aspects, health administrative, and protection of health rights. These three aspects were divided into seventeen issues related with health and human rights.¹⁶ One of them is related with blood security or blood safety.¹⁷

The blood safety could be interpreted as blood service, that categorized as an effort to implement health service with human blood as service object that utilized for humankind purpose as stipulates in the Article 86 Paragraph (1) Act Number 36 of 2009 concerning Health (abbreviated as the Act on Health) and Article 1 number (1) Government Regulation Number 7 of 2011 concerning Blood Service (abbreviated as Blood Service Government Regulation). The Blood Service including blood transfusion services, blood supply, plasma fractionation, and apheresis services that belong to the government responsibility to implement and financing the blood services implementation, which is confirmed in both the Act on Health and the Blood Services Government Regulation.

The blood donor is terms that commonly used and called as blood transfusion services based on Act on Health and Blood Service Government Regulation with scope including planning, mobilization and preservation, supply, distribution, and medical action of giving blood to patients, both in terms of healing disease and restoring health.

The Article 87 Paragraph (1) and (2) of the Act on Health regulates attributive authority tot the Blood Transfusion Unit as the health service facility in the blood service, that held by Central Government, Regional Government, and social organization in Red Cross affairs. Based on Article 1 number (8)-(9), Article 35 Paragraph (2), and Article 41 Paragraph (2) Blood Service Government Regulation, the Blood Transfusion Unit has authority in implementing blood donor, preservation, and distribution also supported

¹³ Luh Putu Sela Septika, "Tanggung Jawab Negara Dalam Penyelesaian Pelanggaran Hak Asasi Manusia," *Jurnal Magister Hukum Udayana* 5, no. 4 (2016): 661-76, <https://doi.org/https://doi.org/10.24843/JMHU.2016.v05.i04.p03>.

¹⁴ Majda El Muhtaj and Dimensi-Dimensi H A M Mengurai Hak Ekonomi, "Sosial Dan Budaya," *RajaGrafindo Persada, Jakarta*, 2009.

¹⁵ Paul Hunt and Gunilla Backman, "Health Systems and the Right to the Highest Attainable Standard of Health," *Health and Human Rights*, 2008, 81-92.

¹⁶ Gudmundur Alfredsson and Katarina Tomasevski, "A Thematic Guide to Documents on Health and Human Rights: Global and Regional Standards Adopted by Intergovernmental Organizations, International Non-Governmental Organizations and Professional Associations," 1998.

¹⁷ Sofia Gruskin, Edward J Mills, and Daniel Tarantola, "History, Principles, and Practice of Health and Human Rights," *The Lancet* 370, no. 9585 (2007): 449-55, [https://doi.org/https://doi.org/10.1016/S0140-6736\(07\)61200-8](https://doi.org/https://doi.org/10.1016/S0140-6736(07)61200-8).

with Hospital Blood Bank that designed as a hospital unit with authority to preserve blood for hospital health service or other health facilities.

However, in recent development, there is need to strengthen Indonesia Red Cross legal framework from Presidential Decree Number 25 of 1950 *juncto* Presidential Decree Number 246 of 1963 concerning Indonesia Red Cross. This willingness has been realized into the Act Number 1 of 2018 concerning Red Cross (abbreviated as Act on Red Cross).¹⁸ This Act also shifts a new legal problem concerning the Blood Transfusion Unit existence in the Act on Health and Blood Service Government Regulation. The Article 22 letter (b) and its Elucidation in the Act on Red Cross have been confirmed one of the Indonesia Red Cross duties is to deliver blood services with Blood Donor Unit. The problem faced there are two different terms in those Laws and Regulations, and it also interpreted with associating between Blood Donor Unit and Blood Transfusion Unit based on Article 19 and its Elucidation in the Government Regulation Number 7 of 2019 concerning Implementing Regulations of the Law Number 1 of 2018 concerning Red Cross (abbreviated as Red Cross Government Regulation). This arrangement was inhibiting the blood service duties in connection with health efforts and health services to realize highest attainable standard of health.

This legal substance still conducted legal problem related with blood service authorities with arrangement of Blood Transfusion Unit in the Act on Health and Blood Service Government Regulation and Blood Donor Unit in the Act on Red Cross and Red Cross Government Regulation. Based on the research that conducted until recent day, there is no authors that specifically focus on different norms problem in any statutory laws concerning blood services. This can be seen from Suminar focusing on obligations related to the house sick in offering blood transfusions based on Law No. 44 of 2009 concerning Hospitals,¹⁹ and Rahardjo researched government policies on the existence of Hospital Blood Banks in an effort to achieve health through blood transfusions.²⁰ Hence, this article has urgency to be delivered and it could be propose a legal solution framework within this article that different from previous researches especially in the context of research result on fact inconsistency over the existence of Blood Donor Unit and Blood Transfusion Unit that still does not found from previous researches results, led this article to be entitled, **"Legal Inconsistency over the Blood Donor Unit and Blood Transfusion Unit Existence in Realizing Indonesia Blood Transfusion Services Authority"**.

¹⁸ Arlina Permanasari, "Politik Hukum Indonesia Dalam Implementasi Konvensi Jenewa 1949 Tentang Lambang Palang Merah," *Masalah-Masalah Hukum* 47, no. 4 (n.d.): 445-59, <https://doi.org/10.14710/mmh.47.4.2018.445-459>.

¹⁹ Sri Ratna Suminar, "Analisis Hukum Terhadap Pemberian Transfusi Darah Di Rumah Sakit Berdasarkan Undang-Undang No. 44 Tahun 2009 Tentang Rumah Sakit," *Syiar Hukum* 13, no. 3 (2011): 247-64, <https://doi.org/https://doi.org/10.29313/sh.v13i3.663>.

²⁰ Neysa Natalia Rahardjo, "Kebijakan Pemerintah Terhadap Keberadaan Bank Darah Rumah Sakit Dalam Upaya Mewujudkan Kesehatan Melalui Transfusi Darah," *Jurnal JURISTIC* 1, no. 01 (2020): 164-76.

2. Research Methods

This article was conducted with purify legal conceptual analysis based on normative legal method with focusing on law as prescriptive disciplines,²¹ and placing law within norms system.²² In this context, there are contradictive norms between Act on Health and Blood Service Government Regulations. This article also using statutory law approach to tracking the Laws or Regulations related with blood services, authority, Blood Transfusion Unit, and Blood Donor Unit, it also strengthened with legal conceptual approach related with blood services concept, blood transfusion concept, Red Cross, and Indonesia Red Cross.

3. Results and Discussions

3.1 Blood Services Arrangement in the Indonesia Statutory Laws

The blood services as one of the health services as stipulates in the Article 38 Paragraph (1) Act on Health has purpose to create legal framework of the highest attainable standard of health in integrative, and holistic frameworks. The stipulation of blood services as the one of the health services showing that blood services as curative health care/services with aims to be part of a series of medical activities intended as a means of healing and controlling disease for patients with the use of basic ingredients in the form of human blood that are human in nature and there is no commercialization objections.²³

The urgency of the blood service arrangement just traced in details form in the Article 2 of the Blood Service Government Regulation, with general outlines related with four main purposes including instrument of legal certainty to fulfill adequate blood availability that meets the blood needs standards, ensuring quality assurance of blood services, juridical instrument to the access to blood in curative health services, as well as being a juridical instrument to ensure accessibility to blood availability information. These four goals of blood services arrangement are inseparable from the Central Government and Local Government responsibility to ensure the realization of blood services in connection with attainable highest health standards,²⁴ based on government action including regulating, fostering, supervising, guaranteeing, facilitating, and funding the blood services implementation that meets health standards and safety and adequate blood availability.

²¹ Andri Gunawan Wibisana, "Menulis Di Jurnal Hukum: Gagasan, Struktur, Dan Gaya," *Jurnal Hukum & Pembangunan* 49, no. 2 (2019): 471-96, <https://doi.org/http://dx.doi.org/10.21143/jhp.vol49.no2.2014>.

²² Kadek Agus Sudiarawan, Putu Edgar Tanaya, and Bagus Hermanto, "Discover the Legal Concept in the Sociological Study," *Substantive Justice International Journal of Law* 3, no. 1 (2020): 94-108, <https://doi.org/http://dx.doi.org/10.33096/sjijl.v3i1.69>.

²³ Abdul Kahar Maranjaya, "Ketentuan Tentang Jeratan Hukum Terhadap Orang Maupun Fasilitas Pelayanan Kesehatan Menurut Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan," *Jurnal Medika Utama* 1, no. 03 April (2020): 121-28.

²⁴ Adhi Putra Satria, "Peran Pemerintah Dalam Pengelolaan Limbah Medis Pada Apotek Dan Praktik Bidan Mandiri," *Law, Development and Justice Review* 3, no. 1 (2020): 15-28, <https://doi.org/https://doi.org/10.14710/ldjr.v3i1.7626>.

The blood services including blood transfusion services that carried out by the Blood Transfusion Unit which is attached as a Technical Institution or Technical Implementing Unit at the Central Government or Local Government, as well as a Blood Transfusion Unit administered by Indonesia Red Cross. This domain task force of blood services in the national statutory laws cannot be separated with international law instruments especially that agreed in the forum of World Health Assembly 63.12 on Availability, safety and quality of blood products.²⁵ The blood services is an obligation that should be taken by government to fulfill adequate blood needs or blood products with independently, and blood security guarantee in the national blood services, both in regulation and statutory laws, management structure, as well as the supporting factors in blood services.²⁶

The statutory laws placed as government instrument to create legal certainty concerning blood services, from management structure, management organization, management duties, funds, supporting aspects of Indonesia blood services.²⁷ The statutory laws and regulations that enacted by government has been divided into Laws/Acts, Government Regulations, and Minister Regulations as legal certainty instrument in realizing national blood services. In below, there is table concerning blood services as regulates in several national statutory laws, *inter alia*:

Table 1. Blood Services Arrangement in the Indonesia Positive Laws

Certain Positive Laws that regulates	Norms Arrangement related with Blood Services	Blood Services Substance
Act on Health	Chapter VI Health Efforts, Part Eleven. Blood Services in Article 86 Paragraph (1)-(3), Article 87 Paragraph (1)-(2), Article 88 Paragraph (1)-(2), Article 89, Article 90 Paragraph (1)-(3), Article 91 Paragraph (1)-(2), and Article 92	Operational definition, object, subject, and parties in blood services (Article 86); Blood Transfusion Unit (Article 87); Blood Transfusion services (Article 88-89); the Government responsibility in Blood Services (Article 90-91); and the imperative norms related with Government Regulations arrangement concerning blood services (Article 92)
Acr on Red Cross	Chapter V concerning Indonesia Red Cross Part One concerning Duties, in Article 22 letter (b) and its Elucidation	The Indonesia Red Cross has duties including assist blood services that administered by Blood Donor Unit in the Indonesia Red Cross
Blood Services Government	Chapter I General Provisions	Operational definition and

²⁵ Luluk Lusiantoro and Benny Tjahjono, "Managing Blood Safety and Availability: A Preliminary Investigation of the Blood Supply Chain Dynamics in Indonesia," in *IOP Conference Series: Materials Science and Engineering*, vol. 598 (IOP Publishing, 2019), 12098.

²⁶ Luke Ifland, Evan M Bloch, and John P Pitman, "Funding Blood Safety in the 21st Century," *Transfusion* 58, no. 1 (2018): 105-12, <https://doi.org/https://doi.org/10.1111/trf.14374>.

²⁷ Yuyun S M Soedarmono, "Donor Issues in Indonesia: A Developing Country in South East Asia," *Biologicals* 38, no. 1 (2010): 43-46, <https://doi.org/https://doi.org/10.1016/j.biologicals.2010.02.001>.

Regulations	in the Article 1 number (1)-(6) and (8)-(9), Article 2, Chapter II Government and Regional Government Responsibility in the Article 3-6, Chapter III Blood Transfusion Service in the Article 7-19, Chapter IV Apheresis services in the Article 20- 24, Chapter V Plasma Fractionation in the Article 25- 27, Chapter VI Blood Donor Parties in the Article 28-33, Chapter VII Blood Transfusion Unit, Hospital Blood Bank, and Networks in the Article 34-42	general purposes the arrangement of Blood Services Government Regulation (Article 1-2); Government and Regional Government responsibility in Blood Services (Article 3-6); Blood transfusion services including Planning, Deployment and Preservation of Blood Donors, Blood Supply (Collecting, Labelling, Prevention of Disease Transmission, Blood Processing, Storage and Destruction), Blood Distribution (Blood Distribution and Delivery), Medical Actions for Giving Blood, and Imposition of Sanctions (Article 7-19); <i>Apheresis</i> services (Article 20-24); Plasma Fractionation (Article 25-27); Blood Donor Parties (Article 28-33); Blood Transfusion Unit, Hospital Blood Bank, and Networks (Article 34-42); Education, Training, Research, and Development (Article 43- 44); and Blood Delivery and Receipt from and to the outside Indonesia (Article 45)
Red Cross Government Regulation	Chapter II Red Cross Implementation Paragraph 6 concerning Blood Services in the Article 18 Paragraph (1)-(2), Article 19, and its Elucidation	The blood services implementation and Blood Donor Unit in the Indonesia Red Cross as the executor of blood services
Minister of Health Regulation Number 83 of 2014 concerning Blood Transfusion Unit, Hospital Blood Bank, and Networks (abbreviated as the Minister of Health Regulation Number 83 of 2014)	Part I General Provisions in the Article 1-2, Part II Blood Transfusion Unit in the Article 3-39, Part III Hospital Blood Bank in the Article 40-53, Part IV Blood Transfusion Services Network in the Article 54-59, Part V Implementation of Blood Services Audit in the Article 60-64	Types, Organization and Duties, Requirements, Permit, Tasks Implementation, Report, Funding, Supervision of the Blood Transfusion Unit (Article 3-39); Organization and Duties, Tasks Implementation, Requirements, Report, Funding, Supervision of the Hospital Blood Bank (Article 40-53) Establishment, Role, Structure, and Funding of the

<p>Minister of Health Regulation Number 91 of 2015 concerning Blood Transfusion Services Standard (abbreviated as Minister of Health Regulation Number 91 of 2015)</p>	<p>Blood Services Network (Article 54-59)</p> <p>Terms of Reference for Blood Transfusion Service Standards and Blood Service Quality Management System; Blood Transfusion Services at Blood Transfusion Unit; <i>plasmapheresis</i>; Hospital Blood Banks; providing blood transfusion to the patient; and blood service information system.</p>
--	---

Sources: Arranged and Collected from several Statutory Laws

Based on this table, the blood services in Indonesia has been accommodate as part of health care/services in the Act on Health and arranged in further with Blood Services Government Regulations as the implementation of the Article 92 of the Act on Health. The blood services technically regulate in the Minister of Health Regulation Number 83 of 2014 and the Minister of Health Regulation Number 91 of 2015 as organic regulations to arrange in detail form the provisions of the Act on Health and Blood Services Government Regulation. Recently, as the legal framework of the Red Cross activity in Indonesia with strengthening Indonesia Red Cross institution with enactment of the Act on Red Cross and Red Cross Government Regulation, that regulates in further related with blood services implementation in national and regional level.

This arrangement is ensuring blood services could be implemented based on highest health standard and blood safety guarantee in collective and holistic frameworks by central government, regional government, or Indonesia Red Cross. It also fulfilling international concensus related with Red Cross and blood services in the context of national health care/services system within national and global development goals.

3.2 The Norms Inconsistency related with Blood Transfusion Unit and Blood Donor Unit as the Administrator of Blood Services

The blood service was administered by Blood Transfusion Unit and Hospital Blood Bank as the Blood Services Network in the national, provincial, or regency/cities level in Indonesia,²⁸ as stipulates in the Act on Health, Blood Services Government Regulation, and Minister of Health Regulation Number 83 of 2014.

The Blood Transfusion Unit as stipulates in the Article 1 number (8) Blood Services Government Regulations defines as healthcare facility with task as the administrator of the blood donor, blood preservation, and blood distribution. The existence of Blood Transfusion Unit has supported with Hospital Blood Bank as recognized in the Article 41 Paragraph (1)-(3) the Blood Service Government Regulation as the hospital services unit with special task in preserving blood for hospital needs or other healthcare

²⁸ Tomy Michael, "Kritik Terhadap Kata 'Agama' Pada 'Kuesioner Riwayat Kesehatan & Pernyataan Donor' Di Palang Merah Indonesia Kota Surabaya Unit Donor Darah," *DiH: Jurnal Ilmu Hukum* 11, no. 21 (2015): 240064.

facilities. Both of them are supported with blood services networks (Article 42 Paragraph (1)-(5) Blood Services Government Regulation and Article 54-57 Minister of Health Regulation Number 83 of 2014). The networks established with purpose to be certain instruments for availability, quality, information system, access, and efficiency in blood services.²⁹ It also became the active communication framework between Transfusion Blood Unit, Hospital Blood Unit, and Regional Public Health Office in ensuring optimum blood services.

The problem was raises in recent years related with the existence of Act on Red Cross with Red Cross Government Regulation, that certain regulates one of the Indonesia Red Cross tasks is administering blood service within regional service task force format in Blood Donor Unit, as regulates in the Elucidation of the Article 22 letter (b) Act on Red Cross and Article 19 with its Elucidation of the Red Cross Government Regulations, as visualized in below:

Table 2. The Arrangement of Blood Donor Unit in the Statutory Laws

The Statutory Laws arrangement	Related Articles	Articles Substance
Act on Red Cross	Chapter V concerning Indonesia Red Cross Part One concerning Duties in the Article 22 letter (b)	The Elucidation of the Article 22 letter (b) regulates that the blood services task administered by Blood Donor Unit in the Indonesia Red Cross, not by the Blood Transfusion Unit.
Red Cross Government Regulations	Chapter II Red Cross Implementation, Paragraph Sixth concerning Blood Services in the Article 18 Paragraph (1)-(2), and the Article 19	The Article 19 regulates the blood services duties was administered by the Blood Donor Unit, including mobilization and preservation of blood donors; supply, processing; and blood/blood components distribution to the health care facilities. However, the Elucidation of the Article 19 associates the Blood Donor Unit with the Blood Transfusion Unit.

Sources: Arranged and Collected from several Statutory Laws

Based on these arrangements, there is other administrator in ensuring blood services is Blood Donor Unit in the Indonesia Red Cross. If it is examined in further context, there is no one certain concept of Blood Donor Unit, while it was stipulates in brief form both in the Act on Red Cross or Red Cross Government Regulation. The Blood Donor Unit as regulates in those laws or regulation has been associates as Blood Transfusion Unit with similar task in administering blood services.

²⁹ Tomy Michael, "Bolehkah Jenis Kelamin Dalam Formulir Donor?," *EGALITA* 14, no. 1 (2019), <https://doi.org/https://doi.org/10.18860/egalita.v14i1.8361>.

This arrangements is contrary with the provisions of the Act on Health, Blood Services Government Regulation, and Minister of Health Regulation Number 83 of 2014, with accommodate Blood Transfusion Unit only as the administrator of blood services in national and regency/city level, as visualized in below:

Table 3. The Blood Transfusion Unit Arrangement in the Statutory Laws

Statutory Laws that regulates Blood Transfusion Unit	Related Articles	Related Articles Substance
Act on Health	Article 87 Paragraph (1)-(2)	The Blood Transfusion Unit has authority based on the Act on Health to administering blood services including blood donor and blood production. The Blood Transfusion Unit has been established and conducted by Central Government, Regional Government, and/or Social Organization in Red Cross affairs.
Blood Services Government Regulations	Chapter III Blood Transfusion Services Part One concerning Planning (Article 7 Paragraph (1)-(2), Article 8 Paragraph (1)-(2)), Part Second concerning Blood Preservation First Paragraph: Collecting and Labelling (Article 9 Paragraph (1)-(5)); Third Paragraph: Blood Production (Article 12 Paragraph (1)-(3)), Fourth Paragraph: Storage and Destruction (Article 13 Paragraph (1)-(5)); Part Fourth concerning Blood Distribution (Article 14 Paragraph (1)-(4)), Second Paragraph: Distribution and Delivery (Article 15 Paragraph (1)-(4)); Chapter IV <i>Apheresis</i> Services (Article 20 Paragraph (1) letter (a) and Article 20 Paragraph (2)); Chapter V Plasma Fractionation (Article 25 Paragraph (1)); Chapter VI Blood Donor (Article 29 Paragraph (1)-(3) and Article 30 Paragraph (1)-(2)); and	The Blood Transfusion Unit was established as healthcare facilities with special task in blood donor, blood preservartion, and blood distribution. This unit alongside with Hospital Blood Bank should be inseparable parts in realizing blood services networks together with Ministry of Health and Regional Public Health Office in Province/Regency/City. This unit has obligations to create blood needs plans that used as the part of national plan on the blood needs by Minister of Health. This unit also has tasks to preserve blood donors, taking medical actions, blood productions, blood storage, blood distribution, conducting <i>apheresis</i> services for blood component preservation, and collect plasma that needed for plasma fractionation. This unit has tasks including planning; preservation of

	Chapter VII Blood Transfusion Unit, Hospital Blood Bank, and Networks (Article 34 Paragraph (1)-(4), Article 35 Paragraph (1)-(2), Article 36 Paragraph (1)-(2), Article 37, Article 38 Paragraph (1)-(4), Article 39 Paragraph (1)-(3), and Article 40 Paragraph (1)-(4))	blood donor; conducting storage, distribution, tracing of reaction and other effects that caused blood transfusion, and destruction of blood that cannot be reused.
Minister of Health Regulations Number 83 of 2014	Article 1 number (4), Chapter II Blood Transfusion Unit (Article 2 Paragraph (1)-(3), Article 4 Paragraph (3), Article 6 Paragraph (2), Article 7 Paragraph (2), and Part Sixth concerning Blood Transfusion Unit Implementation (Article 26, Article 27 Paragraph (2)-(3), Article 28 Paragraph (1)-(2), Article 29 Paragraph (1)-(6), Article 30 Paragraph (1)-(3), Article 31 Paragraph (1)-(2), Article 32, Article 33 Paragraph (1)-(3), and Article 34 Paragraph (1)-(2))	The Blood Transfusion Unit as the healthcare facility with special task in implementing blood donor, preservation, and blood distribution. This unit are established and conducted only by Central Government, Regional Government, or Indonesia Red Cross within regional technical institutions, regional technical administrator unit, or service unit in the regional government hospital owned.

Sources: Arranged and Collected from Several Statutory Laws

Based on the different arrangement between Act on Health, Blood Service Government Regulation, Minister of Health Regulation Number 83 of 2014 with norms that stipulates in the Act on Red Cross and Red Cross Government Regulation indicates that there is need any legal problem solving that still relevan in future or any materials that needed as decision consideration by policy makers to eliminate inconsistency of blood service officials arrangement.

First, based on legal preference principle,³⁰ especially *lex posteriori derogate legi priori* means that the newest law overrides the older law.³¹ The legal preference principle is used to eliminate inconsistency arrangement between Act on Health, Blood Service Government Regulation, and Minister of Health Regulation Number 83 of 2014 that recognizing Blood Transfusion Unit as the executor of blood service, with the Act on Red Cross and Red Cross Government Regulations that recognizing Blood Donor Unit as the executor of blood service. In this context, there is rivalry between legal positivism that strictly placing law as a norm system, with consequence the newest arrangement in the Act of Red Cross and Red Cross Government Regulation related

³⁰ Urbanus Ura Weruin, "Logika, Penalaran, Dan Argumentasi Hukum," *Jurnal Konstitusi* 14, no. 2 (2017): 374-95, <https://doi.org/https://doi.org/10.31078/jk1427>.

³¹ Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, Dan Lex Pesterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum," *Jurnal Legislasi Indonesia* 17, no. 3 (2020): 305-25, <https://doi.org/https://doi.org/10.54629/jli.v17i3.711>.

with blood service is legally binding and override the arrangement in the Act on Health, Blood Service Government Regulation, and Minister of Health Regulation Number 83 of 2014 especially the establishment of the Blood Donor Unit in the Indonesia Red Cross not the Blood Transfusion Unit in the Indonesia Red Cross. However, this arrangement has weakness, caused by blood service practice for several decades before the enactment of the Act on Health in 2009, has been held by the Blood Transfusion Unit, and also it was strengthened within Act on Health and several regulations. Hence, the regulations derived from Act on Health especially related with blood service has been arranged for a long period, including Blood Service Government Regulation in 2011 or Minister of Health Regulation in 2014 and 2015. This condition became challenges for policy makers if they using legal preference principles (*lex posteriori derogate legi priori*).

Second, based on norms arrangement in the statutory law, there three main problems that found in the arrangement of Act on Health, Blood Service Government Regulation, Minister of Health Regulation, with Act on Red Cross and Red Cross Government Regulation.

First, the arrangement in the Act on Health, Blood Service Government Regulation, and Minister of Health Regulation related with Blood Transfusion Unit, as stipulates in the Article 87 Paragraph (2) Act on Health with stipulation “and/or” while the Article 34 Paragraph (1) Blood Service Government Regulation and the Article 2 Paragraph (1) the Minister of Health Regulation Number 83 of 2014 stipulate “or” in the arrangement of Blood Transfusion Body. Based on Appendix Point II Chapter III Act on Laws and Regulations Arrangement 2011, in number (263) has been regulates phrase “or” used to arrange alternative norms, and in number (264), phrase “and/or” used to arrange cumulative-alternative norms.³² This arrangement that regulates in the Act on Laws and Regulations Arrangement 2011 has different meaning, and the arrangement of the Article 87 Paragraph (2) Act on Health, Article 34 Paragraph (1) Blood Service Government Regulation, and Article 2 Paragraph (1) Minister of Health Regulation Number 83 of 2014 has different interpretation related with blood service officials. This arrangement was contrary with formal laws and regulations arrangement principle as stipulates in the Article 5 letter (f) the Act on Laws and Regulations Arrangement. This arrangement directing legislator or policy makers to follows certainty arrangement principle, moreover, they also should be making a norm with fulfill technical, systematical, diction, terms, and certain legal language requirement qualification that could be implemented and avoid multiinterpretative norms.

Second, the Elucidation of the Act on Red Cross and Red Cross Government Regulations indicates technical juridical problem in Laws and Regulations arrangement. The Elucidation of the Article 22 letter (b) Act on Red Cross and the Elucidation of the Article 19 Red Cross Government Regulations was contrary with the limitation of Elucidation arrangement in statutory laws. The Elucidation is arranged as authentic interpretation frameworks from certain norms in the body of statutory laws with any explanation of norms and it should not be created ambiguity and norms

³² Nurul Qamar and Hardianto Djanggih, “Peranan Bahasa Hukum Dalam Perumusan Norma Perundang-Undangan,” *Jurnal Ilmiah Kebijakan Hukum* 11, no. 3 (2017): 337-47, <https://doi.org/http://dx.doi.org/10.30641/kebijakan.2017.V11.3>.

multiinterpretation.³³ The Elucidation of the statutory laws also should not be any implicit norms. Moreover, the Elucidation of the Article 22 letter (b) Act on Red Cross that arranging new norms and the Elucidation of the Article 19 Red Cross Government Regulations that regulates Blood Donor Unit associated with Blood Transfusion Unit that needed to be changed in future.

Third, there is no one certain arrangement in the Transitional Provisions and Closing Provisions of the Act on Red Cross that regulates exceptional revoking in the Act on Red Cross especially blood service that executed by Blood Transfusion Unit in the Act on Health, and there is need to amending Blood Service Regional Government and Minister of Health Number 83 of 2014 to the Blood Donor Unit in the Act on Red Cross.

This prerequisites has been regulates in the Appendix Part II Point C.4. concerning Transitional Provisions in number (127) of the Act on Laws and Regulations Arrangement 2011, that Transitional Provisions should be arranged with aims to be adjustment arrangement framework of legal act or legal relationship in transitional condition,³⁴ after the amendment of Act on Health towards Blood Transfusion Unit, soon after transitional time towards time limitation to amending Blood Service Government Regulations or Minister of Health Regulations related with blood service.

The Appendix Point II C.5. in Closing Part number (137) the Act on Law and Regulations Arrangement 2011 was stressing that Closing Part of Law also regulates related with law and regulations status,³⁵ and the Appendix Point II C.5. number (143)-(146), (148), (271), (278), (280) and number (283) the Act on Law and Regulations Arrangement 2011 also stipulates that norms arrangement that used to revoking several Articles in Act on Health with reformulation norms of Act on Red Cross or Act on Health. Moreover, in the context to revoke several Articles in autonomous regulations including Blood Service Government Regulations and Minister of Health Regulations related with the Blood Transfusion Unit, if it would be changed to be Blood Donor Unit. However, if the Blood Transfusion Unit was maintained, the Blood Donor Unit was removed, and it should be strengthened with revoking the Elucidation of the Article 22 letter (b) Act on Red Cross and reformulate the Act on Health arrangement. In further, it should be follows with the reformulation the Article 19 and Elucidation of the Article 19 of the Red Cross Regulation Government or reformulation of the Blood Service Regulation Government arrangement.

This article was proposing alternative choices that could be used by policy makers including, first model within legal preference principles (*lex posteriori derogate legi priori*) or second model with consider any deviation of norms arrangement limitation

³³ Bagus Hermanto, Nyoman Mas Aryani, and Ni Luh Gede Astariyani, "Penegasan Kedudukan Penjelasan Suatu Undang-Undang: Tafsir Putusan Mahkamah Konstitusi," *Jurnal Legislasi Indonesia* 17, no. 3 (2020): 251-68, <https://doi.org/https://doi.org/10.54629/jli.v17i3.612>.

³⁴ Sri Hariningsih, "Ketentuan Peralihan Dalam Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 6, no. 4 (2018): 595-602, <https://doi.org/https://doi.org/10.54629/jli.v6i4.335>.

³⁵ Retno Saraswati, "Problematika Hukum Undang-Undang No. 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Yustisia* 2, no. 3 (2013): 97-103, <https://doi.org/https://doi.org/10.20961/yustisia.v2i3.10164>.

in the statutory law. This choice was determined with efficiency and effectivity, or it could changing Blood Transfusion Unit especially in the Indonesia Red Cross became Blood Donor Unit, with further arrangement related with Blood Transfusion Unit.

4. Conclusion

This article would be concluded into two main conclusions, **First**, the arrangement of blood service in Indonesia has been in-line with international concensus that agreed in the World Health Assembly. It was stipulates into national statutory laws. The blood services regulated in several Law and implementation regulations including Government Regulation, and Minister Health Regulations. **Second**, the inconsistencies in the blood service regulations especially blood service officials between Law on Health, Blood Service Government Regulation, and Minister of Health Regulations that adopting Blood Transfusion Unit as the blood service officials. This provision is violated by the existence of the Blood Donor Unit with the arrangement of Law on Red Cross, and Red Cross Government Regulations that assoiates the Blood Donor Unit as the Blood Transfusion Unit. There are two main issues that needed to stressed as the solution offer in this article, including the application of legal preference principle (*lex posteriori derogate legi priori*) or the application of the limitation of norms arrangement in the laws or regulations making. The recommendation that should be implemented in further is the need to create certainty framework by policy makers to stressing Blood Transfusion Unit or in opposite context, they should changing Blood Transfusion Unit with the implementation of the Blood Donor Unit in the new Laws, Government Regulation and Minister Health Regulation.

References

- Affandi, Hernadi. "Implementasi Hak Atas Kesehatan Menurut Undang-Undang Dasar 1945: Antara Pengaturan Dan Realisasi Tanggung Jawab Negara." *Jurnal Hukum Positum* 4, no. 1 (2019): 36–56. <https://doi.org/https://doi.org/10.35706/positum.v4i1.3006>.
- Alfredsson, Gudmundur, and Katarina Tomasevski. "A Thematic Guide to Documents on Health and Human Rights: Global and Regional Standards Adopted by Intergovernmental Organizations, International Non-Governmental Organizations and Professional Associations," 1998.
- Aryani, Nyoman Mas, and Bagus Hermanto. "Gagasan Pengaturan Yang Ideal Penyelesaian Yudisial Maupun Ekstra Yudisial Pelanggaran Hak Asasi Manusia Di Indonesia." *Jurnal Legislasi Indonesia* 15, no. 4 (2018): 369–83. <https://doi.org/https://doi.org/10.54629/jli.v15i4>.
- Gostin, Lawrence O. "Health of the People: The Highest Law?" *Journal of Law, Medicine & Ethics* 32, no. 3 (2004): 509–15. <https://doi.org/https://doi.org/10.1111/j.1748-720X.2004.tb00164.x>.
- Gruskin, Sofia, Edward J Mills, and Daniel Tarantola. "History, Principles, and Practice of Health and Human Rights." *The Lancet* 370, no. 9585 (2007): 449–55. [https://doi.org/https://doi.org/10.1016/S0140-6736\(07\)61200-8](https://doi.org/https://doi.org/10.1016/S0140-6736(07)61200-8).
- Hall, Peter. "The Right to the Highest Attainable Standard of Health." *The Lancet* 386, no. 9995 (2015): 738–39. [https://doi.org/https://doi.org/10.1016/S0140-6736\(15\)61535-5](https://doi.org/https://doi.org/10.1016/S0140-6736(15)61535-5).
- Hariningsih, Sri. "Ketentuan Peralihan Dalam Peraturan Perundang-Undangan."

- Jurnal Legislasi Indonesia* 6, no. 4 (2018): 595–602.
<https://doi.org/https://doi.org/10.54629/jli.v6i4.335>.
- Hermanto, Bagus, Nyoman Mas Aryani, and Ni Luh Gede Astariyani. "Penegasan Kedudukan Penjelasan Suatu Undang-Undang: Tafsir Putusan Mahkamah Konstitusi." *Jurnal Legislasi Indonesia* 17, no. 3 (2020): 251–68.
<https://doi.org/https://doi.org/10.54629/jli.v17i3.612>
- Hidayat, Rifatul. "Hak Atas Derajat Pelayanan Kesehatan Yang Optimal." *Syariah: Jurnal Hukum Dan Pemikiran* 16, no. 2 (2017): 127–34.
<https://doi.org/http://dx.doi.org/10.18592/sy.v16i2.1035>.
- Hunt, Paul. "The Health and Human Rights Movement: Progress and Obstacles." *Journal of Law and Medicine* 15, no. 5 (2008): 714–24.
- Hunt, Paul, and Gunilla Backman. "Health Systems and the Right to the Highest Attainable Standard of Health." *Health and Human Rights*, 2008, 81–92.
- Ifland, Luke, Evan M Bloch, and John P Pitman. "Funding Blood Safety in the 21st Century." *Transfusion* 58, no. 1 (2018): 105–12.
<https://doi.org/https://doi.org/10.1111/trf.14374>.
- Irfani, Nurfaqih. "Asas Lex Superior, Lex Specialis, Dan Lex Pesterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum." *Jurnal Legislasi Indonesia* 17, no. 3 (2020): 305–25.
<https://doi.org/https://doi.org/10.54629/jli.v17i3.711>.
- Jauhari, Iman. "Kesehatan Dalam Pandangan Hukum Islam." *Kanun Jurnal Ilmu Hukum* 13, no. 3 (2011): 33–58.
- Kurnia, Titon Slamet. *Hak Atas Derajat Kesehatan Optimal Sebagai HAM Di Indonesia*. Alumni, 2007.
- Lusiantoro, Luluk, and Benny Tjahjono. "Managing Blood Safety and Availability: A Preliminary Investigation of the Blood Supply Chain Dynamics in Indonesia." In *IOP Conference Series: Materials Science and Engineering*, 598:12098. IOP Publishing, 2019.
- Maranjaya, Abdul Kahar. "Ketentuan Tentang Jeratan Hukum Terhadap Orang Maupun Fasilitas Pelayanan Kesehatan Menurut Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan." *Jurnal Medika Hutama* 1, no. 03 April (2020): 121–28.
- Michael, Tomy. "Bolehkah Jenis Kelamin Dalam Formulir Donor?" *EGALITA* 14, no. 1 (2019). <https://doi.org/https://doi.org/10.18860/egalita.v14i1.8361>.
- — —. "Kritik Terhadap Kata 'Agama' Pada 'Kuesioner Riwayat Kesehatan & Pernyataan Donor' Di Palang Merah Indonesia Kota Surabaya Unit Donor Darah." *DiH: Jurnal Ilmu Hukum* 11, no. 21 (2015): 240064.
- Muhtaj, Majda El, and Dimensi-Dimensi H A M Mengurai Hak Ekonomi. "Sosial Dan Budaya." *RajaGrafindo Persada, Jakarta*, 2009.
- Permanasari, Arlina. "Politik Hukum Indonesia Dalam Implementasi Konvensi Jenewa 1949 Tentang Lambang Palang Merah." *Masalah-Masalah Hukum* 47, no. 4 (n.d.): 445–59. <https://doi.org/10.14710/mmh.47.4.2018.445-459>.
- Putra, I Ketut Cahyadi, and Ketut Cahyadi. "Relevansi Konsep Negara Hukum Pancasila Dengan Welfare State Dalam Implementasinya Dengan Pelayanan Publik Di Indonesia." *Jurnal Magister Hukum Udayana* 6, no. 1 (2017): 1–12.
<https://doi.org/https://doi.org/10.24843/JMHU.2017.v06.i01.p01>.
- Qamar, Nurul, and Hardianto Djanggih. "Peranan Bahasa Hukum Dalam Perumusan Norma Perundang-Undangan." *Jurnal Ilmiah Kebijakan Hukum* 11, no. 3 (2017): 337–47. <https://doi.org/http://dx.doi.org/10.30641/kebijakan.2017.V11.3>.

- Rahardjo, Neysa Natalia. "Kebijakan Pemerintah Terhadap Keberadaan Bank Darah Rumah Sakit Dalam Upaya Mewujudkan Kesehatan Melalui Transfusi Darah." *Jurnal JURISTIC* 1, no. 01 (2020): 164–76.
- Rights, United Nations Centre for Human, and United Nations. Office of the High Commissioner for Human Rights. *Human Rights: Universal Instruments*. Vol. 1. United Nations Publications, 2002.
- Saraswati, Retno. "Problematika Hukum Undang-Undang No. 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan." *Jurnal Yustisia* 2, no. 3 (2013): 97–103. <https://doi.org/https://doi.org/10.20961/yustisia.v2i3.10164>.
- Satria, Adhi Putra. "Peran Pemerintah Dalam Pengelolaan Limbah Medis Pada Apotek Dan Praktik Bidan Mandiri." *Law, Development and Justice Review* 3, no. 1 (2020): 15–28. <https://doi.org/https://doi.org/10.14710/ldjr.v3i1.7626>.
- Septika, Luh Putu Sela. "Tanggung Jawab Negara Dalam Penyelesaian Pelanggaran Hak Asasi Manusia." *Jurnal Magister Hukum Udayana* 5, no. 4 (2016): 661–76. <https://doi.org/https://doi.org/10.24843/JMHU.2016.v05.i04.p03>.
- Soedarmono, Yuyun S M. "Donor Issues in Indonesia: A Developing Country in South East Asia." *Biologicals* 38, no. 1 (2010): 43–46. <https://doi.org/https://doi.org/10.1016/j.biologicals.2010.02.001>.
- Suartha, I Dewa Made, Hervina Puspitosari, and Bagus Hermanto. "Reconstruction Communal Rights Registration in Encouraging Indonesia Environmental Protection." *International Journal of Advanced Science and Technology* 29, no. 3 (2020): 1277–93.
- Sudiarawan, Kadek Agus, Putu Edgar Tanaya, and Bagus Hermanto. "Discover the Legal Concept in the Sociological Study." *Substantive Justice International Journal of Law* 3, no. 1 (2020): 94–108. <https://doi.org/http://dx.doi.org/10.33096/sjijl.v3i1.69>.
- Suminar, Sri Ratna. "Analisis Hukum Terhadap Pemberian Transfusi Darah Di Rumah Sakit Berdasarkan Undang-Undang No. 44 Tahun 2009 Tentang Rumah Sakit." *Syiar Hukum* 13, no. 3 (2011): 247–64. <https://doi.org/https://doi.org/10.29313/sh.v13i3.663>.
- Weruin, Urbanus Ura. "Logika, Penalaran, Dan Argumentasi Hukum." *Jurnal Konstitusi* 14, no. 2 (2017): 374–95. <https://doi.org/https://doi.org/10.31078/jk1427>.
- Wibisana, Andri Gunawan. "Menulis Di Jurnal Hukum: Gagasan, Struktur, Dan Gaya." *Jurnal Hukum & Pembangunan* 49, no. 2 (2019): 471–96. <https://doi.org/http://dx.doi.org/10.21143/jhp.vol49.no2.2014>.
- Yusa, I Gede, Bagus Hermanto, and Nyoman Mas Aryani. "No-Spouse Employment and the Problem of the Constitutional Court of Indonesia." *J. Advanced Res. L. & Econ.* 11 (2020): 214. [https://doi.org/https://doi.org/10.14505/jarle.v11.1\(47\).26](https://doi.org/https://doi.org/10.14505/jarle.v11.1(47).26).

Laws and Regulations

1945 Constitution of the Republic Indonesia

Act Number 36 of 2009 concerning Health

Act Number 1 of 2018 concerning Red Cross

Government Regulation Number 7 of 2011 concerning Blood Service

Government Regulation Number 7 of 2019 concerning Implementing Regulations of the Law Number 1 of 2018 concerning Red Cross

Presidential Decree Number 25 of 1950 *juncto* Presidential Decree Number 246 of 1963 concerning Indonesia Red Cross.

Minister of Health Regulation Number 91 of 2015 concerning Blood Transfusion Services Standard

Minister of Health Regulation Number 83 of 2014 concerning Blood Transfusion Unit, Hospital Blood Bank, and Networks.