

LEGAL PROTECTION OF PATIENTS IN HEALTHCARE SERVICES: ENSURING QUALITY AND SAFEGUARDING PATIENTS' RIGHTS

SRIMIGUNA

Doctor of Law, Jayabaya University
srimigunasrimiguna@gmail.com

ETTY SUSILOWATIE

Jayabaya University

YUHELSON

Jayabaya University
yuhelson@jayabaya.ac.id

SUPOT RATTANAPUN

International College, Rajamangala University of Technology Krungthep
Supot.r@mail.rmutk.ac.th

ABSTRACT

Health is a basic human need. Therefore, health has an important role that must be fulfilled in order to improve the quality of human health. According to Health Law Number 36 of 2009 article 1 Paragraph 12-15, it describes several types of health services, namely Promotive Health Services, Preventive Health Services, Curative Health Services, and Rehabilitative Health Services. The basic foundation of the relationship between doctors and patients is civil law relations. In general, patients are protected by Law No. 8 of 1999 concerning Consumer Protection, Law No. 29 of 2004 concerning Medical Practice and Law No. 36 of 2009 concerning Health, Law No. 44 of 2009 concerning Hospitals. The method used in this research is normative juridical which is supported by empirical data. The data collected in this study were obtained and grouped into two sources, namely primary data and secondary data. The study results show that the Government of the Republic of Indonesia has made various regulations to provide patient protection in health services. Efforts to protect the law of patients as a form of guarantee from the government of the Republic of Indonesia so that people's rights to obtain health services are fulfilled. Regarding legal protection for patients as consumers of medical services, in addition to the provisions stipulated in laws and regulations, it can also be based on the provisions of the Civil Code relating to the protection of patients as consumers of medical services, including Articles 1320, 1338, 1365, 1366 and 1367

KEY WORD: Legal protection, health services, patient rights

INTRODUCTION

Health is a basic human need (Johnstone, 2011), As a basic need, health has an important role that must be fulfilled in order to improve the quality of human

health (Revere, 2007). Maintenance of public health and individual health is the responsibility of health workers who make health the object of their efforts. In fact, medical malpractice has occurred in health maintenance.

Broadly, medical malpractice defined as professional negligence caused by improper performance of professional duties or failure to meet professional standards of care resulting in harm to others. (Szmania *et al.*, 2008). From 2006 to 2012, 183 cases of medical negligence or medical malpractice were recorded (Lajar *et al.*, 2020). According to data from the Indonesian Medical Disciplinary Board (MKDKI), until March 2011, 127 complaints of disciplinary violations committed by doctors and medical personnel had been handled. (Andryawan, 2016). Of that number, around 80 percent is due to a lack of communication between doctors or medical personnel and patients (Lajar *et al.*, 2020).

Health services refer more to the organization of health by professionals, while consumers are passive, even mortgage and entrust their health to professionals (Suhardini, 2016). As a service, health services should also apply the principles of service quality consisting of Tangible, Reliability, Responsiveness, Assurance, and Empathy (Dotchin & Oakland, 1994; Taner & Antony, 2006; Bhat, 2012).

According to Health Law Number 36 of 2009 article 1 Paragraph 12-15, it describes several types of health services, namely Promotive Health Services, Preventive Health Services, Curative Health Services, and Rehabilitative Health Services. Health services as an effort to prevent and treat a disease. All activities for improvement and recovery carried out by health workers aim to create a healthy community. This is in line with the objectives of health services, namely the creation of a degree of health in accordance with the expectations and level of community needs (consumer satisfaction), the effectiveness of the needs of service providers (provider satisfaction) within the scope of efficient service institutions (institutional satisfaction).

According to Law Number 8 of 1999 concerning Consumer Protection, that patient is a consumer. The basic foundation of the relationship between doctors and patients is civil law relations. Civil relations are legal relations carried out by parties who are in an equal position, at least when the parties enter into a certain legal relationship (Suhardini, 2016; Mayasari, 2017; Kuswandi, 2019; Kuswardani & Abidin, 2023)

The existence of law in society is to integrate and coordinate the interests of all members of society. The regulation of these interests should be based on a balance between giving freedom to the individual and protecting the community interests (Muchsini, 2009).

In general, patients are protected by Law Number 8 of 1999 concerning Consumer Protection, Law Number 29 of 2004 regarding Medical Practice and Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals. Normatively, patients must be treated in accordance with the provisions above, patients must be treated as subjects who have a major influence on service outcomes, not just objects (Suhardini, 2016).

METHODOLOGY

The method used in this study is a normative juridical method supported by empirical data to provide an overview of the positive legal correlation with the research material. The normative juridical approach is legal research conducted by examining literature or secondary data obtained through empirical activities,

especially researching primary data. (Soekanto & Mamudji, 2011). The data collected in this study were obtained and grouped into two sources, namely primary data and secondary data. Primary data comes from legal materials relating to legal protection of patients as outlined in several juridical provisions, namely Law Number 8 of 1999 concerning Consumer Protection, Law Number 29 of 2004 concerning Medical Practice and Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals. The data was collected using literature study and observation techniques. Data analysis in qualitative research was carried out before entering the field, while in the field and after completing it in the field (Sugiyono, 2009). This means that the data obtained in the data analysis originates from primary and secondary data which are analyzed and arranged systematically.

RESULTS

Nowadays in Indonesia, there is a question about malpractice, especially by health workers, where doctors are the center of discussion. In line with the increase in legal awareness in society, cases related to irregularities in medical practice (medical malpractice) are more frequently revealed, which needs to be properly resolved (Nurdin, 2015).

According to Agustina & Hariri (2022), a comparison between medical risks and medical negligence can be seen in table 1.

Table 1. Comparison between medical risk and medical negligence

Medical risk	Medical negligence
In accordance with the standard operating procedure	Not yet in accordance with the standard according to the operational procedures
There is caution	There is no element of caution
There is no negligence element	There's an element of neglect
There are preventive measures	There are no preventive measures
There's Contributory Negligence	There is no Contributory Negligence

Based on the explanation above, it can be seen that the benchmark for determining a failed treatment outcome is categorized as medical risk or medical negligence is from standard operating procedures, professional standards and opinions of the medical profession itself (Agustina & Hariri, 2022)

DISCUSSION

Law was created as a means or instrument to regulate the rights and obligations of legal subjects (Suhardini, 2016). Legal protection is to provide protection for human rights (HAM) that are harmed by other people and this protection is given to the community so that they can receive all the rights granted by law (Siringoringo *et al.*, 2017; Irawan *et al.*, 2021; Gegen & Santoso, 2022). Meanwhile, according to Philipus M Hadjon, legal protection is protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of arbitrariness (Utami *et al.*, 2018; Kalingga *et al.*, 2021).

In the theory of legal protection, it is stated that something protects legal subjects through applicable laws and regulations and their implementation with sanctions

(Geovani *et al.*, 2021). The broad scope of consumer protection consists of protection for all losses resulting from the use of goods or services. As previously stated, that patients are consumers (Law Number 8 of 1999 concerning Consumer Protection).

The Government of the Republic of Indonesia, has made various rules to provide patient protection in health services (table 2).

Table 2. Patient protection in health services

Regulations	Patient Legal Protection
Law Number 8 of 1999 concerning Consumer Protection	Article 4 "Patients have the right to comfort, security, safety, choice, information, hearing, advocacy, non-discriminatory services, compensation and rights regulated by law".
Law Number 29 of 2004 concerning Medical Practice	Article 52 "The right of the patient, namely to get a complete explanation of medical action, ask for a doctor's opinion, get services according to medical needs, refuse medical action and get the contents of the medical record".
Law Number 36 of 2009 concerning Health	Article 5 paragraph (1) "Every person has the right to access or resources in the health sector" Article 5 paragraph (2) "Everyone has the right to obtain safe, quality and affordable health services" Article 5 paragraph (3) "Everyone has the right to independently and responsibly determine for himself the health services needed for himself" Article 6 "Every person has the right to a healthy environment for achieving health status" Article 7 "Everyone has the right to receive balanced and responsible information and education about health" Article 8 "Every person has the right to obtain information about his own health data including actions and treatment that he has or will receive from health workers" Article 56 "Every person has the right to accept or refuse part or all of the measures of assistance that will be given to him after receiving and understanding the complete information regarding said actions" Article 58 "Every person has the right to claim compensation against a person, health worker, and/or health provider who causes harm due to errors or negligence in the health services they receive"

Law Number 44 of 2009 concerning Hospitals Article 32 "Every patient has the right: a. obtain information regarding the rules and regulations that apply in the Hospital; b. obtain information about the rights and obligations of patients; c. obtain services that are humane, fair, honest, and without discrimination; d. obtain quality health services in accordance with professional standards and standard operating procedures; e. obtain effective and efficient services so that patients avoid physical and material losses; f. submit a complaint on the quality of service obtained; g. choose a doctor and treatment class according to his wishes and the regulations that apply at the Hospital; h. ask for consultation about the disease he is suffering from another doctor who has a Practice Permit (SIP) both inside and outside the Hospital; i. obtain privacy and confidentiality of the illness including medical data; j. receive information including diagnosis and procedure for medical action, purpose of medical action, alternative courses of action, risks and complications that may occur, and prognosis of the procedure performed as well as the estimated cost of treatment; k. give approval or refuse the action to be taken by health workers for the disease they are suffering from; l. accompanied by his family in critical condition; m. carry out worship according to their religion or belief as long as it does not disturb other patients; n. obtain security and safety for himself while in treatment at the Hospital; o. submit proposals, suggestions, improvements to the Hospital's treatment of him/her; p.s. refuse spiritual guidance services that are not in accordance with the religion and beliefs they adhere to; q. sue and/or sue the Hospital if the Hospital is suspected of providing services that are not in accordance with standards both civil and criminal; and r. complain about hospital services that are not in accordance with service standards through print and electronic media in accordance with statutory provisions.

Efforts to protect the law of patients as a form of guarantee from the government of the Republic of Indonesia so that people's rights to obtain health services are fulfilled. Health services basically aim to carry out the prevention and treatment

of disease, including medical services carried out on the basis of individual relationships between doctors and patients who need healing (Bertens, 2011; Suhardini, 2016).

The relationship that occurs between patients and doctors is the relationship between legal subjects as patients who receive health services and doctors as subjects who provide health services (Muchsin, 2009). Regarding legal protection for patients as consumers of medical services, in addition to the provisions stipulated in laws and regulations, it can also be based on the provisions of the Civil Code relating to the protection of patients as consumers of medical services, including Articles 1320, 1338, 1365, 1366 and 1367. If the doctor's actions are carried out without the patient's permission, while the risk of the action can cause disability, the patient can sue the doctor based on default and onrechtmatig daad regulated in Article 1843 to Article 1889 of the Civil Code and Article 1365, as well as Article 1366 of the Civil Code.

Legal protection of patients will contribute to various types of health services so that managers of health services will try to improve services in accordance with regulations (regarding binding rights and obligations).

CONCLUSION

Based on the research results, it was concluded that the Government of the Republic of Indonesia has made various regulations to provide patient protection in health services. Efforts to protect the law of patients as a form of guarantee from the government of the Republic of Indonesia so that people's rights to obtain health services are fulfilled. Regarding legal protection for patients as consumers of medical services, in addition to the provisions stipulated in laws and regulations, it can also be based on the provisions of the Civil Code relating to the protection of patients as consumers of medical services, including Articles 1320, 1338, 1365, 1366 and 1367. If the doctor's actions are carried out without the patient's permission, while the risk of the action can cause disability, the patient can sue the doctor based on default and “onrechtmatig daad” regulated in Article 1843 to Article 1889 of the Civil Code and Article 1365, as well as Article 1366 of the Civil Code.

REFERENCES

1. Muchsin, A. (2009). Patients Legal Protection as Consumers of Health Services in Therapeutic Transactions. *Jurnal Hukum Islam*, 7(1), 1-10
2. Suhardini, E. D. (2016). Legal Protection for Patients as Private Hospital Services Users. *Wacana Paramarta: Jurnal Ilmu Hukum*, 15(1), 1-7
3. K. Bertens, (2011). *Biomedical Ethics*, Yogyakarta: Kanisius
4. Soekanto, S. & Mamudji, S. (2011). *Normative Legal Research*. Jakarta: Rajawali Pers
5. Sugiyono. (2009). *Quantitative, Qualitative and R&D Research Methods*. Bandung : Alfabeta
6. Nurdin, M. (2015). Legal Protection for Patients Against Victims of Medical Malpractice. *Jurnal Hukum Samudra Keadilan*, 10(1), 92-109.
7. Lajar, J. R., Dewi, A. A. S. L., & Widyantara, I. M. M. (2020). The Consequences of Malpractice Law by Medical Personnel. *Jurnal Interpretasi*

Hukum, 1(1), 7-12.

8. Andryawan, A. (2016). Position of the Indonesian Medical Discipline Honorary Council (MKDKI) and the Indonesian Medical Council (KKI) in the Enforcement of Medical Discipline in Indonesia (Study of the Decision of the Supreme Court of the Republic of Indonesia Number: 298k/tun/2012). *Era Hukum*, 1(2), 55180.
9. Johnstone, M. J. (2011). Nursing and justice as a basic human need. *Nursing Philosophy*, 12(1), 34-44.
10. Revere, D., Turner, A. M., Madhavan, A., Rambo, N., Bugni, P. F., Kimball, A., & Fuller, S. S. (2007). Understanding the information needs of public health practitioners: a literature review to inform design of an interactive digital knowledge management system. *Journal of biomedical informatics*, 40(4), 410-421.
11. Szmania, S. J., Johnson, A. M., & Mulligan, M. (2008). Alternative dispute resolution in medical malpractice: a survey of emerging trends and practices. *Conflict Resolution Quarterly*, 26(1), 71-96.
12. Dotchin, J. A., & Oakland, J. S. (1994). Total quality management in services: Part 3: Distinguishing perceptions of service quality. *International Journal of Quality & Reliability Management*, 11(4), 6-28.
13. Taner, T., & Antony, J. (2006). Comparing public and private hospital care service quality in Turkey. *Leadership in health services*, 19(2), 1-10.
14. Bhat, M. A. (2012). Tourism service quality: A dimension-specific assessment of SERVQUAL. *Global Business Review*, 13(2), 327-337.
15. Agustina, Z. A. Z., & Hariri, A. (2022). Criminal Liability for Negligence in Diagnosis by Doctors Resulting in the Death of a Child in the Womb. *Iblam Law Review*, 2(2), 108-128.
16. Mayasari, D. E. (2017). Juridical Review of Informed Consent as a Patient's Rights and Doctor's Obligations. *Varia Justicia*, 13(2), 93-102.
17. Kuswandi, D. (2019). Legal Protection for Dentists in Providing Health Services at the Health Center. *AKTUALITA*, 2(2), 737-8.
18. Kuswardani, K., & Abidin, Z. (2023). Legal Protection for Patients as Users of Health Service Features in the Fisdok Application. *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam*, 5(1), 101-112.
19. Geovani, I., Nurkhotijah, S., Kurniawan, H., Milanie, F., & Ilham, R. N. (2021). Juridical Analysis of Victims of The Economic Exploitation of Children Under The Age to Realize Legal Protection From Human Rights Aspects: Research Study At The Office of Social and Community Empowerment In Batam City. *International Journal of Educational Review, Law And Social Sciences (IJERLAS)*, 1(1), 45-52.
20. Gegen, G., & Santoso, A. P. A. (2022). Legal Protection for Health Workers during the Covid-19 Pandemic. *QISTIE*, 14(2), 25-38.
21. Irawan, A. D., Samudra, K. P., & Pratama, A. (2021). Human Rights Protection by the Government during the COVID-19 Pandemic. *Jurnal Citizenship Virtues*, 1(1), 1-6.
22. Siringoringo, V. M., Hendrawati, D., & Suharto, R. (2017). Arrangements for the Legal Protection of Patient Rights in Indonesian Health Laws. *Diponegoro Law Journal*, 6(2), 1-13.
23. Kalingga, Q. R. H., SHI, M., Aprilianti, D., Sembiring, A., & Sinaga, C. (2021). Legal Protection for BPJS Health Participants According to Law Number 24

- of 2011 concerning BPJS in Bandar Setia Village, Percut Sei Tuan District. *Jurnal Justia*, 3(2), 51-63.
24. Utami, N. A. T., & Alawiya, N. (2018). Legal Protection for Traditional Health Services in Indonesia. *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*, 1(1), 11-20.