

LEGAL PROTECTION OF THE PATIENT'S RIGHT AS A CONSUMER OF HEALTH TO JUSTICE-BASED HEALTH SERVICES

Istiana Heriani^{1*},
Gunarto²,
Anis Masdhurohatun³

ABSTRACT

Journal writings about Medical services is an important issue and its quality needs to be maintained and improved based on the applicable services standard so that the community as the patients can get benefits from the services provided without ignoring the rights of the patients. Hospital has a role in providing medical service and becomes the spear head of medical development in Indonesia. In providing services, the hospital needs to make efforts to increase its public service equality and its medical service, either through accreditation, certification, or other process of quality improvement. The implementation of legal protection and responsibility for the loss suffered by the patients is needed and must be performed by the hospitals as institutions which provide medical services.

Keywords: Protection, Health, Patient

I. INTRODUCTION

In Indonesian laws play an important role in various terms of the life of society and the state. One of them is in the field of health, health is a human rights and one element of well-being to be realized in accordance with the ideals of the Indonesia referred to in the Pancasila and the Constitution of the Republic of Indonesia of 1945.

In pursuit of optimal health for everyone, which is part of welfare, they need the support of law for the implementation of the field of health. At the first the efforts of the implementation of the health only in the form of the treatment of disease and recovering health, and are gradually evolve toward unity in the effort to develop the health of a comprehensive, integrated and sustainable manner that includes the promotif (increase), preventive (healing) and rehabilitative (recovery).

Efforts to the implementation of the health as affected by environmental factors of social culture, including economic, physical environment and biological nature dynamic and complex. The government through health system as well as trying to organize health that is comprehensive, integrated, equitable and acceptable and affordable by all levels of society at large in order to achieve the degree of optimal. (Bahdar Johan Nasution, 2005)

To realize the extent of optimal health for everyone, then it must constantly be interested in earnest for the implementation of national development perspective, the guarantee for the maintenance of health, enhanced professionalism and he does decentralization of health. These activities have is adequate. The legal health are intended for the rule of law and comprehensive protection for the health services in relation to health services in society, there are essentially two kinds of basic rights are individual, namely the right to information (the going to information) and the right to self-determination (the going of self-determination).

Initially the decision of the doctor is a man in the form of see "badani" (fiskalistic), with the developments in the field of social and culture that accompany the development of society has brought changes to the status of human beings as objects, medical science to be subject to the public is very important, so it is we need a caution and professionalism of a health care providers, to support the government's program to make Indonesia healthy then it is very necessary health professionals more professional and responsible in the field of health services.

In term of program development of national in the field of health which sought to increase the degree of health through the development and stabilization of all the wisdom of the system of health is a logical consequence of the quality of medical care overall and integrated so that the quality of service and the provision of facilities on each hospital should be felt by all parties with a sigh of relief. The health management which is the key to the success of the development of health at this time not yet fully adequate. Some of it is a contributing factor is that it was still not adequate system of health information to tell to the public, the integration of health services that hasn't been going well, and not yet fully the control and surveillance and assessment of our programming objective. Recently the media often highlights the healthcare in particular, regarding the relationship between patients and doctors, the provision of facilities are inadequate, the occurrence of cases of violation of medical services (malpractice). Most of the spotlight is aimed at the lack of the doctor in meeting the right of patients, procedures (patient), the treatment of medical discriminatory between the rich and poor, the doctors are not just in time, there are patients who died before getting help and others.

On the basic of the fault or negligence a doctor in the medical profession, is an important think to talk about, this is because dueto fault or negligence had the impact of which is very harmful. In addition to damage or reduce public confidence in the medical profession also result in losses to the patient. However, to know a doctor doing malpractice or not it can be seen from the standard medical profession. By default the profession is a limit to capabilities that include knowledge, skills and professionalism. At least that should controlled by a doctor to perform professional activities in the independently created by professional organizations. From the description, the need for legal protection of the patient from malpractice by health personnel.

II. RESEARCH METHOD

This paper uses juridical-normative method. legal research (Soetandyo Wignjosoebroto, 2002) focuses on the legal protection of the patients right as a consumer of health to justice-based health service, is a legal research in the realm of normative or doctrinal study

In this paper, the authors use three (3) approaches that have relevance significantly, namely the legislation approach, the conceptual approach, and the approach philosophical. Legislation approach (statute approach) is used as the subject set off from legislation, namely the problem of the legal protection of the patients right as a consumer of health to justice-based health service. The conceptual approach (conceptual approach) set off from the views and doctrines that developed in the jurisprudence to find ideas that lead to the concepts of law, a legal sense and the principles of law relevant to the issues faced. With a conceptual approach, researchers will first inventory the concept of supervision set out in UUPK and Healthy Law, assess and understand it, compared with supervision concept derived from the theory and the thinking of experts, so that eventually able to find meaning supervision of legal protection referred to in UUPK and Healthy Law.

The philosophical approach (philosophy approach) researchers expect to be able to interpret the concept of legal protection against the right patient in receiving the medical services and legal protection against the right patient as a consumer health fair.

Types of legal materials used in this study include the primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal material is authoritative legal material, which mean that it has the authority consisting of legislation, official records in the making of laws and regulations, or court order. Secondary legal material is all the publicity about the law which is not an official documents that are authoritative. While tertiary legal material is materials that provide instructions and an explanation of the primary and secondary legal materials.

III. RESULT AND DISCUSSION

A. Protection of law The Right Patient In Receiving The Medical services

Doing an effort to improve the quality of public service and medical services either through accreditation, certification, or the process of improving the quality of the other. Efforts to improve the quality of health services can be interpreted to mean the overall efforts and activities in a comprehensive and integrative regarding the structure, processes, objectively, systematic and continuing to monitor and assess the quality and cloud service to patients, using the opportunity to improve patient care, and solve problems has been disclosed so that the service provided by health personnel at the hospital can be useful to.

The quality of health care by health personnel in the hospital needs to be supported by available resources include human resources, facilities, infrastructure, medical equipment, and the hospital. Generally, the hospitals owned by the government had the treatment to a private hospital, therefore the majority of most people make more use of the hospital's government to acquire health care is very important in supporting public health. However, at a cost of a relatively cheap it is feared will reduce the level of service of health of patients, while for patients who are less capable of course, only to have the ability to seek treatment at a cost that is cheap, especially if the hospital in certain areas only, of course, there was no other option for patients to choose the best treatment especially on health conditions are urged to get medical help. Selainnya to the regions in rural residence, even the hundreds of millions of dollars, an expert health or the doctor in charge of a particular field (specialist) there are only one doctor, it's certainly going to be difficult to provide maximum service to patients and this was in contrast with the code of ethics of medicine.

Go back to the hospital will be is largely determined by the success of those who work in the hospital, in this health care providers like doctors, nurses and the people who are in place. But there are still found the people in Indonesia who complain of health services due to limited skills a doctor or a lack of caution or a negligence in performing his profession, so the impact on the safety of patients. In fact the patient went to hospital with a goal of getting a decent and of all health workers without discrimination between the haves and have-nots, who wears Jamkesmas or don't use it. (Ni Luh Gede, Yogi Arthani, Made Emy, Andyani Citra, 2008)

Health services were an important thing that must be maintained and enhanced quality of the service standards that apply to society as a patient can feel the service provided. In general in the process of treatment or treatment administered by doctors, patients always received without knowing the actions that were given to him. In fact information about the measures that will be performed by a very important to be known by patients that there are no problems or disappointment behind him later. But most people simply believe it will be the things that are offered by a doctor because they consider all the efforts made by either for his health. That's due to lack of a critical or education of patients so by ignorance, they don't feel the need to know the truth about the treatment given by a doctor to patient because everything handed over to the doctor in charge. Lack of services provided by health professionals to the public as consumers due to a few things, including :

1. The doctor and patient.

In service in the medical field, not separated will exist in law between the doctor or hospital as providers of health care with patients as recipients of services health care. Relations arising between patients and hospitals can be distinguished in two kinds of agreement, namely : first, the care where there is an agreement between the hospital and patients that the hospital providing treatment rooms and where power the treatment take action. Secondly, the medical services where there is an agreement between the hospital and patients that medical personnel in the hospital will attempt to its full potential to cure the patients through medical measures. (Fred Ameln, 1991)

Based on these provisions, then the relationship law between patients and doctors are of a doctor with a patient with each have to comply with the conditions in the rule of law or terms the legitimacy of an agreement listed in article to 1320 KUHPerdata. As for the implementation of the treaty should be implemented in good faith in accordance with the provisions of article 1338 and 1339 KUHPerdata. With these provisions, then the process to ensure legal protection for the patient is already protected by law, because in addition to doctors, patients also need legal protection to a proportionate in and either KUHPerdata in general and Consumer Protection Law in a more special. Protection is mainly directed to the possibilities that the doctor and other health make errors of negligence, so that the certainty and the legal protection for patients in health services. It can be properly and optimally.

2. The system of legal protection for patients that are determined the hospital.

Hospital to ensure legal protection for dokter/tenaga health in order not to cause a medic in dealing with patients, patients gain legal protection of the responsibility of the hospital and dokter/tenaga health. To create protection for patients then the parties must understand the rights and obligations attached to it, including the services of health services to be responsible for the profession given to the services of health services. Therefore, doctors and other health need to understand the legal basis in treatment between the doctor with patients, know and understand the rights and obligations of patients as well as the rights and obligations of doctors and it is obliged to keep medical secret, secret office and work to avoid any possibility of bad that happens to patients in health services. If there are complaints from the patients about the service provided will be processed in accordance with the rule of law. The consumer protection also protect patients which, of course related to the rights and obligations of patients as consumers either by doctors and nurses. In fact, the protection of patients clearly stipulated in Act No. 36 of the Year 2009 on Health article 56 of the provisions of, among others, as follows : “(1) Everyone has the right to accept or reject part or all of the aid that will be given to him after receiving and understand information about the measures are complete. (2) The right to accept or reject as referred to in paragraph (1) not apply to : (a) patients with diseases of which the disease can quickly spread into a society that is broad ; (b) of someone who is unconscious ; or (c) a mental disorder. (3) the Uniform Code of the right to accept or reject as referred to in paragraph (1) is set in accordance with the provisions of the legislation ”.

3. The facilities, facilities and infrastructure are inadequate.

The success of a medical service is highly dependent on the quality of human resources supported by other facilities that are available but, Facilities and infrastructure at the hospital's local government located in remote areas, it will certainly not comparable to the hospital in the city, such as an ambulance that amounted to only one unit alone can not meet the service. The hospital was far from residential areas to make people choose the hospital or private clinics around the middle of town, as well as about a patient room that need help fast too far and time consuming.

4. The quality of health services are given dokter/tenaga the health and the hospital.

The role and functions of the hospital as a place to do medical service professionals will be closely related to three (three) the elements, namely : first, the element of guaranteed quality. Secondly, the element of profit or benefit which is reflected in the quality of service. Third, the laws regulating the hospital in general and medical and medical. (Hermien Haditi Koeswadji, 2002) The elements referred to would be beneficial for patients and doctors or health professionals due to a relationship that complement each other. Health services were adequate in desperate need of infrastructure that support, health services, in addition, a doctor should have good knowledge of standard medical services and professional medical, an understanding of malpractice medical, the handling of the emergency room, medical records, euthanasia and others. All of that is a knowledge of today need to be explored in a professional. In order to prevent acts of medical which caused errors and or negligence of dokter/tenaga the health and the hospital, which will cause harm to patients.

5. The rights of patients as consumers.

The right of patients as a consumer service health set out in the Consumer Protection Law of the right to the consumer be provided for in article 4 of the letter c, d, e and f Law No. 8 of 1999 About Consumer Protection, namely : a.hak for the information right, clear and honest about the condition and guarantee goods and/or services ; b.hak to hear the opinions and complaints to the House and services that are used ; c.hak to get advocacy, protection, and the efforts of the settlement of disputes of consumer protection is worth ; d.hak to get construction and consumer education. (Janus Sidabalok, 2006)

B. The Responsibility For The Pain of Loss Patient As A Consumer Healthy As A Result Of Malpractice Of Medical Research

Every accountability should have basic, namely the things that are causing the onset of the legal rights of a person to sue people and in the form of a right that gave birth to the duty of the law of other people to give its responsibility. In general principles of responsibility in the law be distinguished as follows :

1. The principle responsibility based on elements of a (liability based on fault).

2. The principle of presumption to be responsible (presumption of liability).
 3. The principle of the doubt to not always responsible (presumption of non liability).
 4. The principle responsibility absolutely (strict liability).
 5. The principle responsibility with restrictions on (Limitation of liability). (Titik Triwulan Tutik and Sintia Febriana, 2010)
- In civil law the basic responsibility that there are two types of mistakes and risk. (Ali Umar Harahap, Tan Kamello, Suhaidi, 2016)

Thus is known to be on the basis of a (liability without based on fault) and accountability without error (liability without fault), known as the responsibility of the risk of (risk liability) or there are two categories of the hospital as the defendant which is government-owned hospitals and a private hospital.

With regard to the hospital the government, then the board of trustees the government is provided for in Article 1365 KUH of the Civil Code, an employee who work in hospitals the government to be civil servants and State as a legal entity can be required to pay compensation for the actions of civil servants in carrying out their duties to the detriment of other parties. As for the management a private hospital is applied because 1365 and article 1367 KUH of the Civil Code, because a private hospital as a legal entity has a wealth of themselves and can act in law and can be prosecuted just like humans. The health especially for those who work at the Hospital of the Government of the power of civil servants (civil servants) and private, in his profession, both the power from a civil servant or private have a difference in charge.

If a doctor from the civil servant who do kesalahan/kelalaian/malpraktik in action, the doctor was given a sanction in the form of transfer work to agencies other health or the suspension, even the dismissal with no respect if it is considered a violation is a violation of discipline level. It is in accordance with the regulations of the discipline of civil servants as stipulated in Law No. 8 of 1974 concerning Pokok-Pokok Kepegawaian as has been converted into Law Number 43 Year 1999. Sedangkan, private doctors if he's made a mistake usually the sanctions imposed in the form of dismissed by the Hospital where he was working in accordance with the agreement in his employment contract.

As a result of a doctor that caused losses to the patient will be a burden to the hospital. A doctor was limited to trying in accordance with the provision and standards outlined for the profession. So when patients experience ketidaksembuhan, the doctor can not be required during the run in accordance with procedures. But different circumstances, if a doctor running the service is not in accordance with the procedure, patients can sue a loss to him.

Regarding responsibility for the diberikan/dilakukan by the General Hospital that if kesalahan/kelalaian/malpraktik is performed by doctors, patients who suffered a loss can demand compensation to the hospital. Patients who feel aggrieved for medical services can submit complaints or loss to the director of Hospital and then to the committee of medical to provide information about the complaint or disadvantaged from service a doctor or other medical personnel, then the director the hospital would call on both sides of the patients and doctors to be questioned about what happened between them and look for solutions. (Fred Ameln, 1999)

If it is evident that the losses suffered by patients caused by kesalahan/kelalaian/malpraktik the doctor then who are responsible for such losses could house sick or the doctor according to the results of the decisions taken by the director of the hospital. If in the settlement by the Hospital is not found the path of peace, which means patients are not satisfied with the decisions taken by the director of the hospital or there is no problem solving that was obtained. Then the patient's own can report the dispute to the Department of Health or the Indonesian Doctors Association (IDI) to the dispute can be resolved. If still not found a dispute over the then the patient be able to complain in writing to the Chairman of the Assembly of Discipline of Medicine, Indonesia in accordance with Article 66, paragraph 1 of Law No. 29 of 2004 of Medicine. Patients can file a dispute to the District Court. If a doctor doing the wrong profession (institution.malpractice), in terms of jurisdiction, all of them may be brought to criminal courts and civil as malpractice to be done a proof based on standard medical profession.

If a doctor proved to be deviated from standard medical profession and kept informed consent then the doctor was not convicted or be free to make restitution. Article 1365 KUH of the Civil Code stated that investors should compensate fully. From these provisions the hospital and health professionals should be more careful in doing medical measures which of the patient entrusted entirely to medical actions. (Janus Sidabalok, 2006)

IV CONCLUSION

Protection Law Against The patient As Consumers Who Had a Malpraktik The services of health services legal protection against the health care (patient) as consumer health services are set out in the consumer protection and the Law of the Republic of Indonesia No. 29 of the Year 2004 concerning the practice of medicine. The malpractice in terms of providing medical care less than the maximum by the health caused by things, namely : first, the relationship between doctors and patients, which has been more dominant a doctor because patients always obey all orders and directions given by doctors without knowing the truth first. The two systems of legal protection of the hospital. The three, facilities, facilities and infrastructure are inadequate. The four, the quality of medical care given dokter/tenaga the health and the hospital. The five, The rights of patients as consumers who have malpractice in health care don't be met.

Responsibility for the hospital to the losses experienced by patients was due to malpractice is that if the event of a error malpractice medical the disappointment to the director of the hospital or the health or Minster Health and if not yet get the

expected results then the patient can do a formal complaint to the Court's local good in criminal and civil. According to article 1365 KUH of the Civil Code, an employee who work in hospitals the government to be civil servants and State as a legal entity can be required to pay compensation for the actions of civil servants in carrying out their duties to the detriment of other parties. If the status of civil servants who do kesalahan/kelalaian/malpraktik in action, the doctor was given a sanction in the form of transfer work to agencies other health or the suspension, even the dismissal with no respect if it is considered a violation is breaches of discipline level. In addition patients who suffered a loss can demand compensation to the hospital. The patient who feel aggrieved for medical services can submit complaints or loss to the director of Hospital and then to the committee of medical to provide information about the complaint or disadvantaged from service a doctor or medical personnel or of other health.

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Istiana Heriani^{1*},

Doctorate Candidate of Law Faculty, University of Islam Sultan Agung, Semarang, Indonesia and Lecturer of Law Faculty, University of Islam Kalimantan

**E-mail of the coessponding author : iheriani2579@gmail.com*

*Gunarto*²,

Professor of Law of University of Islam Sultan Agung,

*Anis Masdhurohatun*³

Postgraduate Program of Law Faculty, University of Islam Sultan Agung, Semarang