



Legal Protection of Patients Participants of Health Social Guarantee in Human Rights Perspective

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Abstract

The rule of law through the government must provide public services for its people. In the conception of the welfare law state, every citizen/every person has the right to obtain good services and obtain legal protection from arbitrary actions by the authorities. Based on Article 1 number 1 of Law Number 39 of 1999 concerning Human Rights, human rights are rights inherent in every human person that must be protected so that human rights are always the core material of a modern state constitution. Legal steps for patients participating in the Health Social Security Administering Body in the perspective of legal protection.

Keywords: *Legal; Health Social; Right*

Introduction

The rule of law through the government must provide public services for its people. In the conception of the welfare law state, every citizen/every person has the right to obtain good services and obtain legal protection from arbitrary actions by the authorities.¹ Based on Article 1 number 1 of Law Number 39 of 1999 concerning Human Rights, human rights are rights inherent in every human person that must be protected so that human rights are always the core material of a modern state constitution.²

Health service is the right of everyone, and this statement is in accordance with Article 5 paragraph (2) of Law Number 36 Year 2009 concerning Health, which stipulates that everyone has the right to obtain safe, quality and affordable health services. With the establishment and passing of Law

¹ Liem Tony Dwi Soelistyo, 'Dasar Negara: Hubungan Pancasila, Marhaenisme, Marxisme Dan Kapitalisme', *Mimbar Keadilan*, 12.1 (2019), 133–37 <<https://doi.org/10.30996/mk.v12i1.2172>>.

² Tomy Michael, 'Korelasi Hukum Document on Human Fraternity for World Peace and Living Together Dengan Undang-Undang Republik Indonesia Nomor 24 Tahun 2007 Tentang Penanggulangan Bencana', *Jurnal Hukum Magnum Opus*, 2019 <<https://doi.org/10.30996/jhmo.v2i2.2178>>.

Number 40 of 2004 concerning the National Social Security System, personal health social security for the Indonesian people will be implemented in the National Health Social Security System.³

Based on Article 5 paragraph (1) and Article 52 of Law Number 40 of 2004 concerning the National Social Security System, to administer this health insurance a Social Security Administering Body must be formed to accelerate the implementation of national social security for all Indonesian people.⁴

The implementation of health services for the community within the framework of the Social Security Administering Bodies must partner with the hospital, and the hospitals that are partners must be able to improve and realize the highest health standard.⁵ However, in its implementation, there is a gap in the quality of service to patients who indicate a violation of the value of justice due to discrimination in medical services, mainly related to financing issues which are closely related to the readiness of the services provided. In the case of health services experienced by baby Debora, at Mitra Keluarga Hospital, West Jakarta. That is not well served, is an example of discrimination and poor service from the Mitra Keluarga Kalideres Hospital, where the hospital asks the baby Debora's family to pay a down payment of IDR 19,000,000 as a deposit so that she can be treated in the pediatric intensive room care unit (PICU). However, baby Deborah's family could not pay the money so that she did not get the proper services from the hospital, even though baby Deborah was the owner of the Health Social Security Administering Body.⁶

Apart from the baby Debora, who was recorded and made virtualized, the toddler M Rizky Akbar as a participant of the Health Social Security Administration also received discriminatory treatment from the Eka Hospital Tangerang Hospital, Banten. In this case, Rizky's toddler received treatment in the special treatment and care room for children or *pediatric intensive care unit* (PICU) for 1 (one) night after his parents gave him the down payment requested by the hospital, even though Rizky's toddler was a participant in the Health Social Security Administration. The hospital action is clearly not in accordance with the provisions of Article 29 paragraph (1) letter f of Law Number 44 of 2009 concerning Hospitals, which determines "Carrying out social functions, among others by providing services for poor/poor patients, emergency services without advances, free ambulances, services for victims of disasters and extraordinary events, or social services for humanitarian missions". Based on the background as described above, the issues to be discussed are the legal steps for patients participating in the Health Social Security Administering Bodies who experience losses for health services from a human rights perspective.

Research Method

The type of research used in this research is normative juridical with statutory, conceptual, comparative and philosophical approaches.⁷

³ Kemenkes, *UU No 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional*, Kementerian Kesehatan, 2004.

⁴ Last Name and others, 'Bahan Paparan Jaminan Kesehatan Nasional Dalam Sistem Jaminan Sosial Nasional', *Igarss 2014*, 2014 <<https://doi.org/10.1007/s13398-014-0173-7.2>>.

⁵ - Sukardi, 'PENANGANAN KONFLIK SOSIAL DENGAN PENDEKATAN KEADILAN RESTORATIF', *Jurnal Hukum & Pembangunan*, 2016 <<https://doi.org/10.21143/jhp.vol46.no1.49>>.

⁶ Sri Wahyuni Oktaviasari, Hadiyanto, and Yulianto santoso, 'Pengelolaan Dana Bantuan Operasional', 2018.

⁷ Imanuel Rahmani, 'PERLINDUNGAN HUKUM KEPADA PEMBELI DALAM KEPAILITAN PENGEMBANG (DEVELOPER) RUMAH SUSUN', *Jurnal Hukum Bisnis Bonum Commune*, 2018 <<https://doi.org/10.30996/jhbbc.v0i0.1758>>.

Research Results and Discussion

Non-Litigation Settlement Steps

Based on the Law of the Republic of Indonesia Number 24 of 2011 concerning Social Security Administering Bodies, the settlement of cases related to health services can be submitted to the Service Quality Control Unit and participant complaints. In carrying out its duties and functions, this institution is subject to the Board of Directors of the Social Security Administering Body. However, this mechanism causes deprivation, even becomes non-neutral, because this institution will of course tend to be morally bound to the Social Security Administration, and not to patients.⁸

Law Number 44 of 2009 concerning Hospitals provides an opportunity for Hospitals to regulate dispute resolution mechanisms in a specific way that is regulated in the internal hospital regulations as stated in Article 29 paragraph (1) letter r.⁹ This is often a specific condition where between one hospital and another varies in managing its medical services. This difference in service is then used as the basis for the people participating in the Social Security Administering Body to compare with one another.¹⁰

Litigation Settlement Steps

Losses suffered by patients of the Social Security Administering Bodies in hospitals can be classified as medical disputes. Settlement of cases for losses suffered by patients begins with mediation in court.¹¹ If this fails, the patient can settle it by filing a lawsuit with the district court in the area where the applicant lives. For the hospital, settling medical disputes through the courts means risking a reputation that has been hard earned, and can lead to loss of reputation. Even though the doctor has not been found guilty or even the final verdict has been declared not guilty, the good name of the doctor or health service facility has been impressed badly because it has been publicly reported that he was suspected of wrongdoing and will also become a bad stigma in society which in turn causes a level of public trust in the doctor or health service facility will go down.¹² If the patient's losses are related to suspected medical malpractice, the patient can report to the Indonesian Medical Disciplinary Council and report to the police to enter and be processed in the *criminal justice system*.¹³

Judicial Review of Legal Remedies

Judicial review is a legal effort that includes testing of a legal norm which consists of both material testing (material test) and formal testing (formal test). Meanwhile, the right of judicial review is the right to file a review of the prevailing legal norms which are deemed to violate the constitutional rights of citizens or violate higher legislation.¹⁴

⁸ UU RI No 24 Tahun 2011, 'UU No. 24 Tahun 2011 Tentang BPJS', *Journal of Chemical Information and Modeling*, 2011 <<https://doi.org/10.1017/CBO9781107415324.004>>.

⁹ Akhmad Sapri, 'Tanggung Gugat Perawat Asisten Operator Bedah Dalam Menjalankan Profesinya Di Kamar Operasi (Studi Di Rumah Sakit Umum Daerah H.Abdul Moeloek Provinsi Lampung)', *Cepalo*, 2019 <<https://doi.org/10.25041/cepalo.v1no1.1755>>.

¹⁰ Lucia Murniati, Endang Wahyati Y, and Siswo Putranto Santoso, 'IMPLEMENTASI HOSPITAL BYLAWS DI RUMAH SAKIT SANTO ANTONIO BATURAJA SETELAH BERLAKUNYA PERMENKES NOMOR: 755/MenKes/Per/IV/2011 TENTANG PENYELENGGARAAN KOMITE MEDIK DI RUMAH SAKIT', *SOEPR*, 2017 <<https://doi.org/10.24167/shk.v2i2.817>>.

¹¹ Riska Andi Fitriano, Budi Setyanto, and Rehnalemken Ginting, 'PENEGAKAN HUKUM MALPRAKTIK MELALUI PENDEKATAN MEDIASI PENAL', *Yustisia Jurnal Hukum*, 2016 <<https://doi.org/10.20961/yustisia.v5i1.8724>>.

¹² Yussy A. Mannas, 'Hubungan Hukum Dokter Dan Pasien Serta Tanggung Jawab Dokter Dalam Penyelenggaraan Pelayanan Kesehatan', *JURNAL CITA HUKUM*, 2018 <<https://doi.org/10.15408/jch.v6i1.8274>>.

¹³ Ronen Avraham and Max M. Schanzenbach, 'Medical Malpractice', in *The Oxford Handbook of Law and Economics: Volume 2: Private and Commercial Law*, 2017 <<https://doi.org/10.1093/oxfordhb/9780199684205.013.006>>.

¹⁴ Jesse Merriam and Joel B. Grossman, 'Judicial Review', in *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*, 2015 <<https://doi.org/10.1016/B978-0-08-097086-8.86041-9>>.

Judicial review legal action is a legal effort related to testing legal norms of legislation through a judicial institution, in this case a judicial institution.¹⁵ Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, determines that the Supreme Court has the authority to judge at the cassation level, examine statutory regulations under the law against laws, and have other powers granted by law of invite.¹⁶

For example, the health services provided to baby Debora and toddler Risky are not in accordance with the description as stated in the provisions of the legislation above. Where should the baby Debora as a patient participating in the Social Security Administering Body and the hospital as a health service provider have the same position, namely guaranteed rights and obligations. However, patients who participate in the Social Security Administering Bodies do not get guaranteed their rights to health services because they are not clearly regulated in statutory provisions.

Citizen Law Suit

In essence, *citizen law suit* is a mechanism for citizens to sue state officials for negligence in fulfilling citizens' rights. Thus, every citizen in the name of the public interest can sue the Government which has clearly harmed the community.¹⁷ Therefore, every citizen can take the initiative to file a lawsuit without having to suffer the loss directly.

Based on the description above, the incident that befell baby Debora and toddler Risky can be filed a *citizen law suit* against the State/Government Officials for issuing policies that do not support the implementation of health services to everyone, including vulnerable groups of society, where they are entitled to treatment and more protection, with regard to its specificity as referred to in Article 5 paragraph (3) of Law Number 39 of 1999 concerning Human Rights. What is meant by vulnerable groups of people are the elderly, children, the poor, pregnant women and people with disabilities.¹⁸

Class Action Legal Efforts

Class action is a representative lawsuit, in this case related to a lawsuit filed by several people who suffered the same loss and filed the same lawsuit through the court for the losses they suffered.¹⁹ The requirements for class action submission are contained in the Supreme Court Regulation Number 1 of 2002, therefore it does not mean that it cannot be implemented in Indonesia. However, in practice there are still many ordinary people who do not know the procedure of the lawsuit.

Based on the description above, the events that befell baby Deborah and toddler Risky, a *class action* lawsuit can be filed by the family and class representatives to demand compensation in the form of cash payments and/or health recovery costs as appropriate in accordance with existing regulations. Thus, as a party that experiences losses due to bad health services, namely refusal and delays in handling services, because the conditions must exist. The entire down payment cannot be fulfilled by the patient and, because the patient is a participant of the Social Security Administration, for this reason the patient's family can sue through *class action* to claim compensation. In his lawsuit, the plaintiff demanded compensation for fees that had been paid (down payment), the cost of treatment or recovery that should have been or money due to negligence from the hospital.²⁰

¹⁵ Merriam and Grossman.

¹⁶ Komari, 'Mahkamah Agung Republik Indonesia', *Mahkamah Agung Republik Indonesia*, 2015.

¹⁷ Andrew R. Cecil, *Penegak Hukum Lalu Lintas* (Bandung: Nuansa, 2011).

¹⁸ Wiwik Afifah, 'Pertanggungjawaban Pidana Anak Konflik Hukum', *DiH, Jurnal Ilmu Hukum*, 10 (2014), 48.

¹⁹ Tomy Michael, 'CORRUPTION AND NICCOLO MACHIAVELLI', *Asia Pacific Fraud Journal*, 2016 <<https://doi.org/10.21532/apfj.001.16.01.02.21>>.

²⁰ Wiwik Sri Widiarty, 'Gugatan Class Action Dalam Hukum Perlindungan Konsumen', *To-Ra*, 2015 <<https://doi.org/10.33541/tora.v1i2.1135>>.

Conclusion

Legal steps for patients participating in the Health Social Security Administering Body in the perspective of legal protection, namely (a) Non-Litigation Settlement Steps through a mediation process or consensus in the event of a medical dispute, (b) Adjudication/Litigation Settlement Steps through a complaint to the Disciplinary Honorary Council Indonesian Medicine if there are allegations of malpractice or violations of medical ethics, criminal reports to the Indonesian police according to the level, police, police, and police, and for damages, a civil suit can be filed with the competent local district court, either due to illegal acts (medical neglect) or suit of default. (c) Take special steps or legal remedies consisting of judicial reviews, citizen law suits or class actions.

References

- Afifah, Wiwik, 'Pertanggungjawaban Pidana Anak Konflik Hukum', *DiH, Jurnal Ilmu Hukum*, 10 (2014), 48
- Andrew R. Cecil, *Penegak Hukum Lalu Lintas* (Bandung: Nuansa, 2011)
- Avraham, Ronen, and Max M. Schanzenbach, 'Medical Malpractice', in *The Oxford Handbook of Law and Economics: Volume 2: Private and Commercial Law*, 2017 <<https://doi.org/10.1093/oxfordhb/9780199684205.013.006>>
- Fitriano, Riska Andi, Budi Setyanto, and Rehnalemken Ginting, 'PENEGAKAN HUKUM MALPRAKTIK MELALUI PENDEKATAN MEDIASI PENAL', *Yustisia Jurnal Hukum*, 2016 <<https://doi.org/10.20961/yustisia.v5i1.8724>>
- Kemenkes, *UU No 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional, Kementerian Kesehatan*, 2004
- Komari, 'Mahkamah Agung Republik Indonesia', *Mahkamah Agung Republik Indonesia*, 2015
- Mannas, Yussy A., 'Hubungan Hukum Dokter Dan Pasien Serta Tanggung Jawab Dokter Dalam Penyelenggaraan Pelayanan Kesehatan', *Jurnal Cita Hukum*, 2018 <<https://doi.org/10.15408/jch.v6i1.8274>>
- Merriam, Jesse, and Joel B. Grossman, 'Judicial Review', in *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*, 2015 <<https://doi.org/10.1016/B978-0-08-097086-8.86041-9>>
- Michael, Tomy, 'Corruption and Niccolo Machiavelli', *Asia Pacific Fraud Journal*, 2016 <<https://doi.org/10.21532/apfj.001.16.01.02.21>>
- , 'Korelasi Hukum Document on Human Fraternity for World Peace and Living Together Dengan Undang-Undang Republik Indonesia Nomor 24 Tahun 2007 Tentang Penanggulangan Bencana', *Jurnal Hukum Magnum Opus*, 2019 <<https://doi.org/10.30996/jhmo.v2i2.2178>>
- Murniati, Lucia, Endang Wahyati Y, and Siswo Putranto Santoso, 'IMPLEMENTASI HOSPITAL BYLAWS DI RUMAH SAKIT SANTO ANTONIO BATURAJA SETELAH BERLAKUNYA PERMENKES NOMOR: 755/MenKes/Per/IV/2011 TENTANG PENYELENGGARAAN KOMITE MEDIK DI RUMAH SAKIT', *SOEPR*, 2017 <<https://doi.org/10.24167/shk.v2i2.817>>
- Name, Last, First Name, Online Training, Practical Training, C Darin, Rank Online Training, and others, 'Bahan Paparan Jaminan Kesehatan Nasional Dalam Sistem Jaminan Sosial Nasional', *Igarss 2014*, 2014 <<https://doi.org/10.1007/s13398-014-0173-7.2>>
- Oktaviasari, Sri Wahyuni, Hadiyanto, and Yulianto santoso, 'Pengelolaan Dana Bantuan Operasional', 2018
- Rahmani, Imanuel, 'PERLINDUNGAN HUKUM KEPADA PEMBELI DALAM KEPAILITAN PENGEMBANG (DEVELOPER) RUMAH SUSUN', *Jurnal Hukum Bisnis Bonum Commune*, 2018 <<https://doi.org/10.30996/jhbhc.v0i0.1758>>
- Sapri, Akhmad, 'Tanggung Gugat Perawat Asisten Operator Bedah Dalam Menjalankan Profesinya Di Kamar Operasi (Studi Di Rumah Sakit Umum Daerah H.Abdul Moeloek Provinsi Lampung)', *Cepalo*, 2019 <<https://doi.org/10.25041/cepalo.v1no1.1755>>

- Soelistyo, Liem Tony Dwi, 'Dasar Negara: Hubungan Pancasila, Marhaenisme, Marxisme Dan Kapitalisme', *Mimbar Keadilan*, 12.1 (2019), 133–37 <<https://doi.org/10.30996/mk.v12i1.2172>>
- Sukardi, 'PENANGANAN KONFLIK SOSIAL DENGAN PENDEKATAN KEADILAN RESTORATIF', *Jurnal Hukum & Pembangunan*, 2016 <<https://doi.org/10.21143/jhp.vol46.no1.49>>
- UU RI No 24 Tahun 2011, 'UU No. 24 Tahun 2011 Tentang BPJS', *Journal of Chemical Information and Modeling*, 2011 <<https://doi.org/10.1017/CBO9781107415324.004>>
- Widiarty, Wiwik Sri, 'Gugatan Class Action Dalam Hukum Perlindungan Konsumen', *To-Ra*, 2015 <<https://doi.org/10.33541/tora.v1i2.1135>>

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