



## Legal Protection of Hospital Patients in the Corona Virus Pandemic Period

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### Abstract

*This study aims to explain the legal protection for patients during the Covid-19 pandemic and the protection mechanism for patients as consumers. This research used doctrinal research. Basically, health development involves all aspects of life, physical, mental and socio-economic. In the growth of health development so far, there has been a change in orientation, both value and thought, especially regarding effort to solve problem in the health sector which are influenced by politic, economic, socio-cultural, defence and security as well as science and technology. The change of orientation will affect the implementation process of health development. Health development, which is basically the responsibility of the state, becomes very important because the private sector also participates in creating a product in the health sector. This society is generally referred to as consumer. Indonesia and all over the world are currently in a pandemic of the Covid-19 virus, where the virus is spreading so fast. Not yet found anti-virus against this virus, the only way is that everyone is obliged to maintain immunity in the body. But it is very unfair for other patients, currently the focus of medical personnel and hospital is to deal with the Covid-19 outbreak, so that the rights of other patients cannot be fulfilled.*

## Background

The World Health Organization (hereinafter abbreviated as WHO) has announced the status of a global pandemic for the 2019 corona virus disease or what is also known as the corona virus disease 2019 (COVID-19) on March 11, 2020. In health terms, pandemic means the occurrence of an outbreak of a disease that attacks many victims, simultaneously in various countries. Meanwhile, in the case of COVID-19, the world health organization WHO has declared this disease as a pandemic because all citizens of the world have the potential to be infected with the COVID-19 disease. WHO states that the Corona COVID-19 virus can be categorized as a pandemic because it has spread widely throughout the world this is a policy priority and countermeasures for countries in the world (Valencia, 2020 Rudnicka, 2020; Cucinotta & Vanelli, 2020). With the stipulation of the global status of the pandemic, WHO at the same time confirmed that COVID-19 was an international emergency. This means that every hospital and clinic around the world is advised to be able to prepare themselves to treat patients with the disease even though no patient has been detected.

Health service is actually a legal act, which results in the emergence of a legal relationship between health service providers, in this case a hospital for health service recipient, which includes professional activities or activities in the field of preventive and curative service for the interest of patients. In particular, in Article 29 paragraph (1) letter (b) of Law Number 44 of 2009 concerning Hospital (hereinafter referred to as the Hospital Law), hospitals have the obligation to provide safe, quality, anti-discrimination, and effective health services by

prioritizing the interest of patients in accordance with hospital service standard. Regulations or legal basis in every act of health care in hospitals must be implemented in accordance with the provision of Article 53 and Article 54 of the Health Law as the basis and general provision and provision of Article 29 paragraph (1) letter (b) of the Hospital Law in conducting health service.

In the administration of health in the hospital includes all aspects related to health care. Through the provision of the Health Law and the Hospital Law, in this case the government and health service provider institution, namely hospital, have the responsibility to ensure that development goal in the health sector achieve optimal result, namely through the use of health worker, facilities and infrastructure, both In terms of quantity and quality, both through accreditation mechanism and standard setting, must be oriented to legal provision that protect patients, thus requiring a dynamic health law that can provide legal certainty and protection to improve, direct and provide a basis for health service.

The hospital has grown and expanded as a service center, which is continuously criss-crossed by various health care sector divisions and health officials from various disciplines, cooperating both in their respective expertise, as well as holding mutual consultations between among expertise. Officially, inpatients at the hospital are also considered to be responsible for quality control of all hospital services.

Thaha (2016) divides government functions into four parts, namely public service, development, empowerment, regulation. Rosevelt & Stalin (2005) argued that to know a society, look at its government. This means that government functions that are carried out at a certain time will describe the quality of government itself. If the government can carry out its functions properly, the next main task according to him is how service can produce justice, empowerment that results in justice, empowerment that results in independence, as well as development that creates prosperity. In relation to these services, it becomes a major function in government.

Based on Law Number 25 of 2009 concerning Public Service (hereinafter referred to as the Public Service Law), public services are activities or a series of activities in the context of fulfilling service needs in accordance with statutory regulation for every citizen and resident for goods, services, and/or administrative service provided by public service provider. Improving efficient and effective public service will support the achievement of efficiency and effectively will support the achievement of financing efficiency, meaning that when public service provided by service providers to the parties that is served run according to actual condition or the mechanism or procedure is not convoluted, will reduce cost or a burden on the service provider and also the service recipient.

In carrying out public service, there is an institution that is authorized to carry out these obligations. Government institutions are divided into service units that directly provide service to the community. The service success measure will be reflected in the community satisfaction index received by service recipients based on their actual expectations and needs. However, in fact public service can cooperate with the private sector or be handed over to the private sector if they are regarded more effective and as long as they are able to provide maximum satisfaction to the community.

Based on Law Number 23 of 2014 concerning Regional Government, health is a concurrent authority which is basic, so health becomes a regional authority which has been divided with the central authority. So the regions have the obligation to carry out matters in the health sector.

This is emphasized in Article 6 of Government Regulation Number 47 of 2016 concerning Health Service Facilities. The Central Government and Regional Government are responsible

for the availability of Health Service Facilities in the context of realizing the highest status of health.

Health service activities can be obtained starting from the level of health center, public/private hospital, clinic and other health service institutions, it is hoped that the contribution will be more optimal and maximum. The community or patients in this case demand good health services from several administering institutions above so that their performance can be felt by patients and their families, on the other hand, the government has not been able to apply health service regulation appropriately, as expected because of limitations. For improving health service requires good, skilled health workers and good hospital facilities, but not all medical service institutions meet these criteria, thus improving the complexity of today's health care system. And to support good health service with good health worker, it is necessary to also support qualified health facilities. This means that if good health services are not supported by good facilities, then the community will not get their right to obtain health.

Health service is actually a legal act, which results in the emergence of a legal relationship between health service providers, in this case a hospital, and health service recipients, which includes professional activities or activities in the field of preventive and curative service for the benefit of patients. In particular, in Article 29 paragraph (1) letter (b) of the Hospital Law, hospitals have the obligation to provide safe, quality, anti-discriminatory and effective health service by prioritizing the interest of patients in accordance with hospital service standard. Regulation or legal basis in every act of health care in hospitals must be implemented in accordance with the provisions of Article 53 and Article 54 of the Health Law as the basis and general provision and the provision of Article 29 paragraph (1) letter (b) of the Hospital Law in conducting health service. In the administration of health in the hospital includes all aspects related to health care.

Through the provision of the Health Law and the Hospital Law, in this case the government and health service provider, namely hospital, has the responsibility so that the development objectives in the health sector achieve optimal result, namely through the use of health worker, facility and infrastructure, both in the number and quality, both through accreditation mechanism and standard setting, must be oriented to legal provision that protect patients, so it requires a dynamic health law that can provide legal certainty and protection to improve, direct and provide a basis for health service. The hospital as a place for health facility service must pay attention to the principles contained in Article 2 of the Hospital Law.

Understanding the need and desire of consumers in this case the patients is an important thing that affects patients' satisfaction. Satisfied patients are a very valuable asset because if patients are satisfied they will continue to use the service of their choice, but if patients are dissatisfied they will tell others twice as much about their bad experiences. To create patient satisfaction, a company or hospital must create and manage a system to obtain more patients and the ability to retain patients.

Health law regulates a person who has the authority to perform medical actions. In this case, doctors have been regulated by law to perform actions within their authority and in accordance with the permission given by the Ministry of Health to them so that in carrying out these medical actions there is no malpractice that could harm the patient. On the basis of this regulation, the right of citizens to obtain health service is a form of social rights in fundamental rights, this is in accordance with Hadjon's (1987) opinion that: natural rights and human rights which are converted into legal rights are called fundamental rights. The essence of social rights is rights to receive. Health service which is rights, including the right of citizens to take care of their bodies and faces by obtaining actions taken by those who are competent in their fields.

From these elements, what is meant by medical action is: a series of medical actions to seek, overcome or restore health problems; Maintain and improve the patient's health status, performed by a competent doctor, performed according to medical indication, carried out in accordance with applicable service/procedure standard and with the consent of the patient or family. In general, medical action is through direct doctor's intervention to patients such as: interviews or history taking, physical examination, supporting examination, administering drugs or surgery, but there are times when medical action also takes the form of actions that must be taken by the patient himself on the doctor's recommendation (rest at recovery period), therefore giving a certificate of rest due to illness, giving a consul letter and writing a drug prescription, are considered as administrative medical actions. This study aims to explain the legal protection for patients during the Covid-19 pandemic and the protection mechanism for patients as consumers.

## Methods

This research used doctrinal research type, namely, this research produced a systematic explanation of the legal rules that regulates a particular legal category. Besides that, doctrinal research is also aimed at academic purposes, namely researchers have a neutral position and the target readers are academics and practitioners.

The statute approach was carried out by examining all laws and regulations that are related to the legal issue being handled. For research for academic activities, researchers need to find the ratio legis and the basis of the ontologism of the birth of the law. So a relevant rule can be found to solve the problem. The conceptual approach was carried out by looking for existing theories and doctrines to be used as a reference in order to understand views and doctrines in developing a legal argument in solving the issue that being faced.

## Results and Discussion

### Legal Protection for Patients During the Covid-19 Pandemic Period

Government Regulation Number 47 of 2016 concerning Health Service Facilities of local government has an obligation to provide hospitals with their service facilities. The distribution of hospitals in each region is the government's obligation to achieve optimal health.

The government based on the constitutional power of the 1945 Constitution of the Republic of Indonesia has the right to regulate and manage the community in terms of public interest. So in the context of the bureaucracy, it must be able to realize national goal, to achieve a developed, independent, and prosperous community. Including the Health Service Function which is the task of the bureaucracy as a tool of government. The community certainly has the right to get optimal health service regardless of social status. The government has an obligation to control and improve health services aimed at the public in the form of regulation.

According to Selznick (2002) regulation is a continuous and focused control that is carried out by public institutions on service activities needed by the community. Meanwhile, Health Service Regulation is a public effort to have direct or indirect influence on the behavior and functions of organizations and individuals who provide health service.

The role of government in regulation is divided into three, namely as a guide, role as regulator, and role as implementer of regulated services (Soepojo et al., 2002). Role as a guide in health service regulation, the government establishes, implements, and monitors the rules of the health service system, ensures the balance of the various parties involved in health service, and compiles a strategic plan for the entire health system. As a regulator, the government carries out supervision to ensure that health service organization provides quality service. Meanwhile,

as an implementer it can be through health service facilities, where the government is obliged to provide quality service.

The community has a very important role and is responsible for the sustainability of regulation in health service. Through Law Number 14 of 2008, Concerning Openness of Public Information, then Health Service Facilities are required to disclose information about their performance to the public through mass media, so that people have a choice in choosing health service facilities that have good performance, and avoid health service facilities that have poor performance. The community can also exercise control over health service facilities by forming an independent institution that monitors the performance of health service facilities and provides feedback to improve quality and performance in health service.

The customer satisfaction index submitted by customers through independent institutions, community groups, or directly to health service facilities is a very useful control mechanism to ensure quality in providing health service to the public, and prevent malpractices that harm customer safety. With the existence of regulations in the form of Legislation (statutory and regulations), licenses / permits, accreditation, and certification, it can ensure that service facilities and health workers have a functional role in accordance with legal principles and according to applicable standard, so that patients feel safe and legally protected is the most important thing, for health workers, of course, in providing health services according to applicable standard.

After knowing the patient's rights, in a situation like this, medical personnel and hospital are at the forefront of fighting Covid-19 or the corona virus. With the limited PPE provided by the government as well as the consequences of panic buying by some people, this has caused doctors to be extra in handling patients. Hospitals are not only places for those who have contracted the corona virus but also for patients who have a history of other illnesses. It is undeniable that during this pandemic, doctors and even hospitals cannot provide their strength to each patient specifically. Because what is being fought is not only those infected with the corona virus but other patients. Considering that the improving number of patients infected with the corona virus, medical personnel must be extra working. Considering that the patient is a consumer who uses hospital service, the patient's rights are double, not only as a patient but as a consumer. If you pay attention to consumer rights, it is necessary to provide legal protection for patient as consumer. Because consumer also has rights.

The role of law in an economic context is to create a competitive economy and market. It is also related to that, that no single business actor and producer can dominate the market, as long as consumers have the right to choose which products offer the best value, both in price and quality. And there are no business actors and producers who are able to set excessive prices or offer products of low quality, as long as there are other producers in the consumer, they will move to these other products. Business actors in this case are the hospital sector and health service provider, both managed by the government and the private sector.

### **Protection Mechanism for Patients as Consumers**

Consumer protection should get more attention, because foreign investment has become part of Indonesia's economic development, where the Indonesian economy is also linked to the world economy. International competition can have negative implication for consumers. Consumer protection is not only for low-quality goods, but also for goods that are harmful to community. One of the characteristics of law state (*rechtsstaats*) is the recognition and protection of human rights which contain equality in the political, legal, social, economic and cultural fields. Dicey (2013) stated supremacy of law, equality before the law and constitution

based on individual rights. Protection of human rights is widely promoted in order to promote respect and protection of human rights as an important feature of a democratic constitutional state. In other words, if a country deliberately neglects and violates human rights and the resulting suffering cannot be dealt with fairly, then that country cannot be called a law state in the real sense.

The Indonesian Constitution guarantees human rights in Chapter XA. With regard to institutions and associations, the 1945 Constitution of the Republic of Indonesia guarantees freedom for citizens to associate, assemble and express opinions. More than that, post-reform of Indonesian legislation also provides space and movement as well as facilities for the growth of institutions and non-governmental organizations. This was carried out so that community also has an active role in the implementation of good governance in Indonesia. United Nations Resolution Number A/RES/39/248 dated April 16, 1985 concerning Consumer Protection (Guidelines for Consumer Protection), formulated one of the basic interest of consumers, namely: "Freedom to form consumer organizations or other relevant organizations and provide opportunities for these organizations to voice their opinions in making decisions that concern their interests."

In the last two decades, the world's attention to consumer protection issues has improved. The consumer protection movement has long been recognized in the Western world. Countries in Europe and America have long had regulations on Consumer Protection. World organizations such as the United Nations have not paid attention to this problem. This is proven by the issuance of United Nations Resolution No. 39/248 of 1985. In this resolution the interest of consumers that must be protected: Which is Protection of consumers from hazards to health and safety; Promotion and protection of consumers' socio-economic interests; The availability of sufficient information for consumers to give them their ability to make the right choices according to their personal desires and needs; Consumer education; Availability of effective compensation effort; Freedom to form consumer organization.

If the consumer feels aggrieved, then an attempt can be made to file a lawsuit with Consumer Dispute Resolution Bodies (BPSK). Because consumers also have rights, consumer rights are as follows: The right to comfort, security and safety in consuming goods and/ or services; The right to choose goods and/or services and to obtain the that goods and/or services in accordance with the exchange rate and condition as well as guarantee promised; The right to correct, clear and honest information regarding the condition and guarantee of goods and/or services; The right to be heard by their opinions and complaints regarding the goods and/or services used; The right to obtain advocacy, protection, and efforts to properly resolve consumer protection disputes; The right to receive consumer guidance and education; The right to be treated or served properly and honestly as well as not discriminatory; The right to get compensation, indemnity and/or replacement, if the goods and/or services received are not in accordance with the agreement or not as it should be; The right regulated in the provisions of statutory regulations.

Talking about the role of the Consumer Dispute Resolution Agency (hereinafter referred to as BPSK), it is closely related to consumer dispute and even the best method and solution that can be carried out by BPSK in handling consumer dispute problem, that is the real role of BPSK's role. Consumer dispute is any dispute between consumers and providers of goods and/or services of business actors in a legal relationship between one another regarding the product. In the case of a dispute, of course there is an error from one of the parties which is called default. According to Suherman (2002) dispute is one of the causes of default from one party who does not fulfill its obligations as agreed together or there are external factor outside the

parties that result in not fulfilling the achievement of an agreement. In general, the authors concluded several roles of BPSK in dealing with the current consumer dispute problem, including: (1) Report to the general investigator if there is a violation of the provision in the Consumer Protection Law. (2) BPSK acts as a conciliator, Mediator and Arbitrator in resolving consumer dispute.

From previous research, consumer protection has not been optimal, this is based on the research of Kartika et al (2016) and Muchsin's research (2016) which still requires improvements in terms of consumer protection. Consumers who have problem with the products that they consume will be able to obtain their rights more easily and efficiently through the role of BPSK. In addition, it can also be an access to equal information and guarantee of legal protection for both consumer and business actor. In handling and managing consumer problems, BPSK has the authority to examine the accuracy of report and statement from the disputing parties. Bill, lab test result and other evidences by consumer and entrepreneur with binding final settlement.

The main tasks of BPSK is Handling consumer problem through mediation, conciliation or arbitration; Consumer consultation in terms of consumer protection; Controlling the addition of standardized parts; Providing administrative sanction against entrepreneurs who violate the rules; Dispute Resolution Procedures through BPSK is Conciliation, Mediation, and Arbitration process. Article 52 letter g of the Consumer Protection Law does indeed give BPSK the authority to summon business actors that is suspected of having violated consumer protection. However, BPSK is not given the authority for forced summon of these business actors. Even so, BPSK can ask for help from investigators to bring in business actors who are not willing to comply with the summons of consumer dispute resolution agency (see article 52 letter i UUPK). So, BPSK does not have the authority to make forced summon, but BPSK can ask for help from investigators to present business actors. Investigators here refer to the Police Officers of the Republic of Indonesia and certain Civil Servant Officers within government agencies whose scope of duties and responsibilities is in the field of consumer protection (see article 59 paragraph (1) of the Consumer Protection Law).

In the case of business actor still does not fulfill the summon of BPSK, BPSK can adjudicate consumer dispute without the presence of the business actor. This refers to article 36 of Decree of the Minister of Industry and Trade 350/2001, that is, in the case that a business actor is not present on the I (first) trial day, the BPSK panel of judges will give the business actor the last chance to attend II (second) trial by bringing evidence that is required. If at trial II (second) the business actor is not present, then the consumer's lawsuit is granted by the Assembly without the presence of the business actor. So, in the case that a business actor does not attend the trial, BPSK can grant the consumer's lawsuit. The BPSK decision itself is a final decision and has permanent legal force (see article 54 of the Consumer Protection Law). Final means that in a consumer dispute settlement agency there is no appeal and cassation (see explanation of article 54 paragraph (1) of the Consumer Protection Law). Then, the BPSK decision can be requested to determine the execution by BPSK to the District Court at the location of the aggrieved consumer (see article 42 paragraph (2) Decree of the Minister of Industry and Trade 350/2001). Nonetheless, BPSK does not have the fang to carry out its decision, still there must be a decision from the court.

## Conclusion

In the situation of the Covid-19 Pandemic this is a disaster for all of us. Doctors cannot run or pay attention to any of the patients, their limitations and energy have been used to fight this pandemic. In fact, it is said that for those who are sick but not too badly, not to come to the hospital, it will cause an improve in patients infected with the Covid-19 virus. The services



provided by the hospital are of course in accordance with the standards, but if not all diseases must be treated immediately or getting service may not be done immediately. Currently, there must be qualifications for any diseases that can be rushed to the hospital. So that for now it is the conscience that must be put forward, not only about fulfilling the rights and obligations of a patient. The guidance of consumer protection that is carried out by the government is an effort to guarantee the consumers rights and business actors are obtained as well as the performance of their respective obligations in accordance with the principle of justice and the principle of balance of interests. The task of guidance in implementing consumer protection is carried out by the minister in charge of these fields. This minister coordinates the implementation of consumer protection. In an effort to educate consumers and protect consumers, it is necessary to have an active role and supervision carried out by the government. And if consumers feel that they are being aggrieved, one of the ways that can be done is by means and the best solution that can be done by BPSK in dealing with consumer dispute problems, that is the real role of BPSK's role.

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