

## LEGAL PROTECTION OF PATIENTS AGAINST DEFAMATION CONVICTIONS

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### ABSTRACT

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The state is responsible for providing proper health services as stipulated in the 1945 Constitution of the Unitary State of the Republic of Indonesia, the government as the personification of the state is obliged to provide legal protection to patients. The protection in question is that the state explicitly establishes special laws for patients. Healthcare providers must be criminally responsible if there are mistakes and/or negligence in providing their services that cause the patient to experience harm, both physically and non-physically. Legal regulations that have been used as instruments to protect patient rights are considered ineffective because the ethical process for health care providers, in this case, doctors, takes a protracted time, so patients have already been convicted because they were accused of committing defamation, so it becomes a dilemma for patients to take legal steps against doctors who have committed malpractice and harmed patients. This study uses normative legal research methods with statutory approaches, legal concept approaches, and qualitative approaches to describe and produce descriptive data. The results of this study indicate that until now, there has been no regulation that specifically regulates the rights of patients so it is the state's responsibility for proper health services and should form special laws to protect the rights of patients.

Keywords: Patient Criminalization

### 1. INTRODUCTION

The Constitution of the Republic of Indonesia of 1945 (*UUD. NRI.1945*) in Article 28 H paragraph (1) states that "Everyone has the right to *live a prosperous life physically and mentally, to reside, and to get a good and healthy living environment and the right to health services*" to achieve this goal, sustainable development efforts are carried out which is a series of comprehensive, directed and integrated development, including health development.

Health is a human right and one of them must be realized in accordance with the ideals of the Indonesian nation as embodied in the constitution of the Indonesian nation. For this reason, every activity and effort to improve the highest degree of public health is carried out based on the principles of non-discrimination, participation, protection, and sustainability which are very important for the formation of Indonesian human resources, increasing the resilience and competitiveness of the nation, and national development.

Doctors as the main component of providing health services to the community have a very important role because they are directly related to the provision of health services and the quality of services provided. The main foundation for doctors to be able to perform medical actions against others is science, technology, and competencies possessed, which are obtained through education and training. Doctors with scientific devices in their possession have distinctive characteristics. This peculiarity can be seen from the justification given by law, namely the permissibility of medical actions against the human body in an effort to maintain and improve the degree of health.

The responsibility of the state in providing human resources is that health workers who have skills and abilities in their fields must at least meet the qualifications that have been regulated in laws and regulations. In addition to having to meet these qualifications, health workers are required to have the authority to provide health services in accordance with the provisions including;



- a) *Must be in accordance with the field of expertise owned.*
- b) *In providing health services, health workers must have permission from the government.*
- c) *While providing health services, it is forbidden to prioritize interests of material value.*

Law No. 9 of 1960 concerning Health in Article I states: "*Every citizen has the right to the highest degree of health and needs to be included in government health efforts*". This provision was later updated in Law No. 23 of 1992 concerning Health Article 4 which states that: "*everyone has the same right to obtain an optimal degree of health*".

As a party that is obliged to provide health services that are everyone's rights, doctors must not violate these rights. These rights and obligations underlie the relationship between doctors and patients, which automatically gives rise to rights and obligations for doctors and vice versa, rights and obligations for patients.

The right to health care creates a legal obligation for doctors to serve patients. This obligation is not absolute because the patient also has the right to refuse or choose the way of treatment he wants. This right causes limited authority of doctors in providing treatment.

With the rights and obligations of doctors to these patients, it does not cause doctors to just arbitrarily use their rights and obligations. In carrying out their rights and obligations, doctors are limited or controlled by ethics (*professional ethics*) as internal control and law as external control.

The world of health today does not always run in accordance with the expectations of all parties, especially the wishes of patients in using health services, because in practice health services provided by health workers, especially doctors to patients often cause legal problems in the relationship between doctors and patients. Lately, the medical profession in Indonesia has often received criticism from various walks of life. This reality arises with the increasing number of cases of negligence in medical actions carried out by a doctor, better known as doctor malpractice, which of course has a very bad impact and harms patients. The doctor is accused of harming patients due to medical practice mistakes made against patients. Then the medical profession became cornered. The medical profession is also a profession that is at legal risk because the error of medical actions can lead to criminal charges and / or civil lawsuits. This makes it difficult for doctors to carry out their profession to provide health services to the community.

Conflictual relationships with the reporting of a doctor and / or the hospital to patients occur due to complaints or disappointment openly by patients with the services of doctors / hospitals, especially patients who experience losses for health services from doctors / hospitals. This patient's complaint or disappointment is considered by the doctor/hospital as a form of defamation. For example, the case of Prita Mulyasari who was policed and then tried to the level of judicial review (PK), then the final verdict in PK turned out that Prita Mulyasari was found not guilty of defamation, this was then the community or patients judged that the doctor / hospital had criminalized the patient.

Factual conditions as above, show that both the doctor / hospital and the patient are both potential to fall into legal problems. The noble intention of doctors/hospitals to provide health services to patients in need can actually drag doctors/hospitals to criminal charges and/or civil lawsuits in the event of medical malpractice. The patient's expectation to get excellent health care from the doctor/hospital can also drag the patient into legal trouble if the patient exposes his disappointment through social media over the poor health services of the doctor/hospital. Such conditions are clearly not conducive and constructive for health development efforts which are one element of national development to advance the general welfare as mandated by the 1945 Constitution.

Based on the description above, it can be taken a limitation of the problem, why legal protection of patients is very important to be carried out in the Unitary State of the Republic of Indonesia and expect the state to explicitly form a special protection law to protect the rights of patients.

## 2. METHODS

This research uses normative legal research methods with a statutory approach, legal concept approach, and qualitative approach to describe and produce descriptive data. Statute Approach The first approach in legal research is the statutory approach. This approach has a meaning as a research approach carried out by reviewing all laws and regulations related to legal issues being handled by researchers. With this approach, the author will look for ratio legis and ontological basis for the birth of the law, so



that researchers are able to understand the philosophical content of the law and are able to conclude whether there is a philosophical clash between the law and the issue at hand.

### 3. RESULTS AND DISCUSSION

#### A. Legal Protection of Patients is Very Important in Indonesia.

For someone, health is the most valuable asset, because on this side each individual will try to stay in a healthy state and as much as possible avoid causative factors that can cause disease (*unhealthy*). While on the other hand, he will try if already sick, to eliminate / treat every form of disease suffered. So it can be said that health is a basic need for humans together and other basic needs such as clothing, food, even sometimes have to ignore other basic needs in order to get health (*recover from the disease suffered*).

Health becomes a basic need of society, both the community as a collection of individuals, and the environment in which these individuals live and live. So important is the meaning of health, that health is included as one of the most basic rights for humans and incorporated into various laws and regulations.

The Constitution of the Unitary State of the Republic of Indonesia in 1945, for example, affirms in Article 28 H paragraph (1) that "*everyone has the right to health services*". The birth of the right to obtain "*health services*" can certainly come from the existence of the right to health itself. Including to enjoy a good and healthy living environment as stated in the Law. No. 32 of 2009 concerning Environmental Protection and Management. Article 65 paragraph (1), this law confirms that a good and healthy environment is part of Human Rights (HAM).

#### B. Forms of State Responsibility in the Fulfillment of the Right to Health Based on the NRI Constitution of 1945

Patients as recipients of health services, have rights that they must get, such as one of them is to get humane services and get good quality care. But now people are very difficult to get good services from health services in this case are doctors, nurses, nurses, and hospitals. Moreover, underprivileged communities often receive very poor services from these health service providers. Sometimes the hospital requires patients to fulfill existing procedures, namely paying administrative money first before being treated. This is actually contrary to the social function of health services as affirmed in Law No. 36 of 2009 concerning Health. Because this Law stipulates that everyone has the same right to obtain an optimal degree of health.

The Universal Declaration of Human Rights by the United Nations (UN) in 1948 (Indonesia *co-signed it*) and the Constitution of the Republic of Indonesia in 1945 in Article 28 H, stipulate that health is the basic right of every individual and all citizens. Therefore, in the perspective of fulfilling citizens' basic rights to health, the government is bound by the responsibility to ensure adequate access for every citizen to adequate and optimal health services. As an effort to respect, protect and *fulfill* the state's obligation to implement human rights norms on the right to health, it must meet the following principles:

- a. Availability of health services;
- b. Accessibility;
- c. Acceptance;
- d. Quality

Meanwhile, in the form of state obligations to fulfill the right to health is internalized in the form of government policies with principles including:

- a. Respect the right to health;
- b. Protect the right to health;
- c. Fulfill the right to health

That Article 34 Paragraph (3) of the 1945 Constitution states that "*the State is responsible for the provision of health care facilities and proper public facilities*". The explanation of the article in the 1945 Constitution as it proves that health is a human right inherent from birth. The state is obliged to guarantee the right to health for all its people.

Indonesia as a developing country is still faced with the problem of low public access to quality health services even though in fact health is the right of every individual and all citizens have the right to get health services without exception, therefore the government must be responsible for providing health guarantees to all its citizens, including the underprivileged.

Because of the importance of health for the community, the state is responsible for adequate health services, including increasing the allocation of the health budget by at least 10% of the State Budget (APBN) in the health sector and controlling the use of health funds so that their use is right on target and benefits all people who need health services

Law Number 40 of 2004 concerning the National Social Security System (SJSN), explains that the state's responsibility in fulfilling citizens' access to health is to issue health insurance policies or programs that are fair and accessible to all citizens. The government is obliged to formulate and implement policies for a fair insurance insurance system for citizens, including health insurance for citizens.

Law Number 32 of 2004 concerning Regional Government, stipulates that the health sector is a matter of the Central Government, Provincial and Regency / City Governments. In Law Number 32 of 2004, it is explained that the Regional Government (*Province / City Regency*) has the obligation to improve the quality of life of the community; realizing justice and equity, providing health service facilities, providing social facilities and proper public facilities, developing a social security system.

A complete explanation of the division of state authority and responsibility for each level of government is regulated in Government Regulation Number 38 of 2007 concerning the Division of Government Affairs between the Government, Provincial Regional Government, and District/City Regional Government. This responsibility must be based on respecting, protecting and fulfilling the basic rights of citizens to adequate health.

In Government Regulation Number 38 of 2007 it is mandated that the health sector is a government matter that is shared between levels and / or government structure, also called concurrent government affairs, which are held jointly by the Government, Provincial Regional Government and Regency / City Regional Government.

Law Number 36 of 2009 concerning Health, regulates the state responsibilities of both the Government, Provincial Government and Regency / City Government that must be carried out, including:

- a. Plan, organize, organize, foster, and supervise the implementation of health efforts that are equitable and affordable to the community;
- b. The availability of environment, order, health facilities both physical and social for the community to achieve the highest degree of health;
- c. Availability of resources in the field of health that is fair and equitable for all people to obtain the highest possible degree of health;
- d. Availability of access to information, education, and health care facilities;
- e. Empowering and encouraging the active role of the community in all forms of health efforts;
- f. Availability of all forms of quality, safe, efficient, and affordable health efforts;
- g. Implementation of public health insurance through the national social security system for individual health efforts.

Based on the legal framework of Law Number 36 of 2009 concerning Health, resources in the health sector that must be provided by the government and local governments are budgets, health workers, health supplies, pharmaceutical preparations, medical devices and service facilities and health technology that are sufficient and adequate.

The existence of provisions regarding social welfare in the NRI Constitution of 1945, is the embodiment of the concept of the welfare state (*welvaart staat* or welfare state), the state actively participates for the welfare of its people (welfare state), otherwise known as *verzorgingsstaat*, or called *social law state* (*social law state*), where the state is required to realize welfare and social justice for all its people.

### C. Factors of Health Workers Committing Errors and/or Negligence

#### In providing health services to patients.



In general, what can be the cause of failure or discrepancy in providing health services by health workers is the inability to perform these services or not having the skills and never having attended education or training related to the health profession.

Not only health workers who do not have the ability or skills, health workers who have undergone education and training such as doctors, dentists, nurses, midwives, etc. are not spared from failure or non-conformity in carrying out health services, this can be caused by errors or negligence made because they are not in accordance with applicable medical procedures.

Health workers who can be said to be negligent if they do not pay attention to the patient's condition by being indifferent, indifferent, or not paying attention to the associations of life in society, especially the associations of the patient himself. Negligence caused by health workers due to trivial matters is not categorized as a legal consequence and if it otherwise threatens patient safety, the nature of such negligence will be deliberate.

As for health workers who can be said to make mistakes in general due to lack of knowledge, experience, and understanding in doing or providing health services. Mistakes can be made intentionally or unintentionally. Intentionally done by doing actions prohibited by laws and regulations, while unintentionally due to negligence such as abandoning the patient's treatment because of forgetting.

#### **D. Criminal liability against malpractice doctors is reviewed from the Criminal Code.**

The attachment of doctors to legal provisions in carrying out their profession is a legal responsibility that must be fulfilled by doctors, one of which is the criminal law responsibility to doctors regulated in the Criminal Code (KUHP), namely in Article 90, Article 359, Article 360 paragraphs (1) and (2) and Article 361 of the Criminal Code. One of them in Article 360 of the Criminal Code states:

Verse:

- (1) Whosoever by mistake causes serious injury to a person, shall be punished with imprisonment for not more than one year.
- (2) Whosoever by mistake causes a person to be injured in such a way that that person becomes temporarily ill or is unable to carry out his position or work temporarily, shall be punished with imprisonment for nine months or imprisonment for not more than six months or a fine of not more than four thousand five hundred rupiah. If based on the articles mentioned above, if applied to cases of malpractice committed by doctors, there are several elements that stand out, namely:
  - a. The doctor has made a mistake in carrying out his profession.
  - b. The doctor's actions were carried out due to negligence or negligence.
  - c. The error is due to doctors not using knowledge and skill levels that should be done based on professional standards.
  - d. There is a fatal result, namely the death of the patient or the patient suffers severe injuries.

Therefore, every mistake made by someone, of course, there must be appropriate sanctions for the wrong maker to accept, so that there is balance and harmony in social life.

#### **E. The responsibility of health workers in fulfilling the patient's rights in obtaining compensation due to errors or negligence.**

To be able to carry out a responsibility, health workers must have skills, burdens, obligations as a form of achievement, and actions. According to the Big Dictionary Indonesian, responsibility is "the condition of being obliged to bear everything (*if anything happens it can be prosecuted, blamed, prosecuted, and so on*)". This liability can be criminal or civil which has a relationship. This relationship is positive in the sense that an act of this type can be subject to criminal penalties as well as civil penalties. Because mistakes or errors made by health workers can be a form of crime or default.

Granting the right to compensation is a form of responsibility in providing protection for everyone for consequences arising both physical and non-physical due to errors and negligence committed by health workers. Physical harm means loss of function of body organs either partially or as a whole, while what is meant by non-physical loss is related to material losses experienced by patients

A claim for liability in terms of material distress is a claim for a complaint or dissatisfaction with what has been felt in receiving health services. For this reason, the plaintiff, namely the patient or the



patient's family, can file a civil claim by entering a civil lawsuit into the court, which of course takes a long time until there is a legal decision with permanent legal force.

In addition to the right to compensation contained in Article 58 of Law Number 36 of 2009 concerning Health, civil claims, especially in the right to obtain compensation, can be seen in detail in Article 4 letter h of Law Number 8 of 1999 concerning Consumer Protection which states the right to obtain compensation for compensation and / or replacement, if the goods and / services received are not in accordance with the agreement or are not as they should be, The compensation can be in the form of refunds or health care and/or compensation in accordance with the provisions of the applicable laws and regulations (*Article 19 paragraph (2)*). The right to compensation is a right that can be obtained if in carrying out health services health workers commit negligence, error, or default. The award of compensation is carried out within a grace period of 7 (seven) days after the transaction date, with this compensation does not eliminate the possibility of criminal prosecution based on further evidence of the existence of an element of guilt.

In resolving disputes between health workers and patients with the fulfillment of elements of negligence or error in the form of a criminal charge made by health workers before entering the realm of court, Law Number 36 of 2014 concerning Health Workers and Law Number 36 of 2009 concerning Health insists that it must first be resolved out of court through mediation (*Article 78 of Law Number 36 of 2014 concerning Health Workers jo Article 29 of Law Number 36 of 2009 concerning Health*).

#### **F. Patient complaints over poor health services lead to crime.**

##### **a. Delays in the Health Care Process.**

Complaints about delays in the service process are a frequent factor in the delivery of health services. This happens because patients who come are not handled directly and even seem to be left when they want to do health services. Coupled with a series of complaints submitted that the existing facilities and infrastructure are inadequate when they want to provide services to patients. Delays in the service process that often occur are caused by not being balanced properly by the capacity of patients who come to check with officers who work which is still lacking.

A series of problems that occur in the delay in the service process are not balanced or not supported properly by the availability of the number of health services that are less competent or seem slow and less professional in serving patient health services. But in fact, complaints about delays in procedures or health services are still experienced by some patients.

More concrete socialization is needed from health services to the community, more open up or respond well to complaints submitted by the community, explain and provide more understanding or attention to people who complain about delays in the service process and issue new breakthroughs in overcoming various delays in the service process so that later complaints from the community can decrease and can increase satisfaction community to the health services obtained.

##### **b. Less friendly health caregivers.**

Unfriendly staff are usually a scourge for patients in getting health services. Patients who want to be served well but are faced with attitudes and behaviors of officers that are not in accordance with expectations. Unfriendly staff usually occurs when patients who want to be served quickly and precisely but health workers are not wholeheartedly or happy to provide good understanding and service to patients. Officers who seem indifferent and not with open arms provide understanding and good service to patients, who are impressed to provide health services with no smile, patience in handling complaints submitted by patients. However, in fact, the officer who behaved in this manner was not reprimanded directly by the hospital and/or its coordinator, or was not given direction so that the officer would better maintain his ethics when serving patients.

##### **c. Information that is less clear to the patient.**

There is poor communication between health services and patients in receiving and taking care of all needs that include health services which often makes the information conveyed to patients seem poorly understood or understood by patients.

Constraints on the problem of information submitted by patients to health services that are not responded well by health services or often late information submitted by health care workers to patients who are not right on target and clear.



Unclear information can cause health services provided to be constrained both in terms of delivery delivered by health services that are poorly understood or understood by patients so that there is a sense of patient distrust in providing clear and accurate information as needed by patients.

The emergence of officers who often convey unclear information to patients does not want to explain back directly the information needed even seems evasive or ignorant is one of the obstacles or problems in health services or even directs unclear information conveyed to these patients to other health workers without accounting for the information that is first conveyed to patients.

d. The criminal defamation act and the Electronic Transaction Information Law serve as shields for those who are criticized.

Law No. 19 of 2016 concerning Electronic Information and Transactions (ITE) is being discussed because it is considered to be one of the sources of problems in the reform era. The reason is, the ITE Law is often used as a shield for health services and / or corporations to criminalize patients to the police.

The ITE Law has again become a hot topic after President Joko Widodo on Monday, February 8, 2021 asked the public to be more active in expressing criticism to the government in the launch of the 2020 annual report of the Indonesian Ombudsama.

Jokowi's request was responded cynically by a group of people and activists, they considered that the criticism conveyed was often problematic because it violated the ITE Law. Jokowi then asked the House of Representatives to revise the ITE Law so that it would not be used to criminalize people who criticize. One of the articles highlighted is Article 27 paragraph 3 which reads "*Everyone intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have the content of insult and/or defamation*".

However, long before Jokowi's administration, the ITE Law also often took its toll because it was used by a number of parties who did not accept criticism. The author explained that one example of a major case that captured the attention of the public was Prita Mulyasari in 2008.

Prita initially checked her health at Omni International Hospital, Tangerang, but after the examination she complained about the service at Omni International Hospital through the mailing list, Prita's vent about complaints about Omni International Hospital services was spread. Omni Hospital finally reported Prita. Prita was charged with violating Article 27 paragraph 3 of the ITE Law.

Prita Mulyasari who was convicted by the Tangerang District Court pursuant to decision No. 1269/PID. B/-2009/PN. TNG dated December 29, 2009 with a verdict stating that Prita Mulyasari was legally and conclusively proven guilty of committing a criminal act "*intentionally and without the right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents that have the content of insult and/or defamation*" as stipulated and threatened criminally in Article 27 paragraph (3) jo. Article 45 paragraph (1) of Law Number 11 of 2008 concerning Electronic Transaction Information (ITE), therefore the Court sentenced Prita Mulyasari to imprisonment for 6 (six) months for defaming OMNI International Hospital Alam Sutera Tangerang and after going through a tiring legal process as a result of the legal efforts of the Defendant Prita Mulyasari at the PK level (*Judicial Review*) according to Case Number 225 PK/PID. SUS/2011 dated September 17, 2012, Prita Mulyasari was acquitted of all charges by the Public Prosecutor.

Criminal law in Indonesia is also regulated in the Criminal Code hereinafter abbreviated as the Criminal Code, divided into 3 books, namely:

- a) Book one: general rules;
- b) Second book: crime;
- c) The third book: transgression.

In this writing, the author focuses on discussing crimes regulated in the Criminal Code book II, especially regarding criminal defamation. Defamation is regulated in Article 310 of the Criminal Code which is the first Article in Chapter XVI of the Criminal Code concerning Insults Article 310 of the Criminal Code is often the legal basis for deciding defamation cases in Indonesia. The article on defamation in the Criminal Code deals with the protection of individual interests which include life, property, and honor.

Article 310 of the Criminal Code consists of 3 paragraphs, paragraph 1 reads "*Whoever deliberately damages the honor or good name of a person by accusing him of doing something with the*



*real intention of spreading the accusation, shall be punished with menista, with imprisonment for a maximum of nine months or a fine of not more than four thousand five hundred rupiah*" paragraph 2 of Article 310 of the Criminal Code reads " *If it is done with writing or images broadcast, displayed or pasted in public, it is threatened with written defamation with a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiah*" and paragraph 3 of Article 310 of the Criminal Code reads "does not constitute defamation or written defamation, if the act is clearly done in the public interest or because it is forced to defend itself".

Article 310 of the Criminal Code paragraphs 1 and 2 above, mentions the term "defamation" with "insult" The "insult" referred to in article 310 of the Criminal Code paragraph 1 is "accusing someone of having committed a certain act" with the intention "so that the accusation is spread (*known to the public*)." Violation of article 310 of the Criminal Code paragraph 1 is punishable by a maximum prison sentence of 9 months or a maximum fine of IDR 4,500. Meanwhile, article 310 of the Criminal Code paragraph 2 regulates punishment for acts of "insult" or "accusation" committed through written or graphic means. Violation of article 310 of the Criminal Code paragraph 2 is punishable by a maximum prison sentence of 1 year 4 months or a maximum fine of Rp 4,500. Article 310 of the Criminal Code paragraph 3 provides for the exclusion or elimination of criminal defamation or insult (which is regulated in article 310 of the Criminal Code paragraphs 1 and 2) if the act is done in the public interest or in self-defense.

With the existence of the Defamation Law as mentioned above, it becomes narrow for patients / people to express their criticism to health services and / or their corporations because it will definitely be blown into the vortex of criminal law, because in fact the community really does not want to deal with legal problems in this country with legal propositions always sharp down and blunt up.

#### 4. CONCLUSION

The profession as a doctor is not easy because many doctors in their world often commit malpractice actions that result in medical errors that cause patients to be disabled or die, so in practice in order not to cause arbitrariness from a doctor to his patients it is necessary to hold criminal legal responsibility, which if reviewed from the Criminal Code against doctors who commit malpractice acts can be accounted for their actions by Article 360 of the Criminal Code in paragraphs (1) and (2) so that doctors who perform medical actions that result in serious injury or death due to negligence of doctors to their patients can be held criminally responsible, with the aim of protecting the rights of victims who get malpractice acts, but the regulations governing malpractice crimes in the Criminal Code have not clearly regulated the qualifications and types of malpractice acts that exist in the field of medicine, the regulations in the Criminal Code only regulate more to the consequences of the malpractice act, so there is a need for new regulations in the Criminal Code that specifically regulate the qualification of malpractice acts committed by doctors, so that the doctor can be held accountable for his actions criminally and law enforcement can have a clear juridical basis in enforcing the regulations in the Criminal Code against doctors who commit malpractice acts.

Health is a fundamental right of every human being, both individually, family, and society entitled to protection of their health, therefore the state is responsible for regulating and protecting the right to optimal public health. The responsibility of the state in fulfilling the right to health is manifested in the form of providing adequate health facilities, which are easily accessible to the public and should form special laws to protect the real rights of patients.

#### SUGGESTION

The state has the responsibility for the fulfillment of the basic right of health of citizens guaranteed by the constitution. Therefore, it is necessary to restructure the service system and financing of health insurance so that decent health services can be accessed easily, fairly and non-discriminatory by all levels of society and the State through Executive and Legislative institutions as well as the judiciary should coordinate and form special laws protecting the rights of patients.

#### REFERENCE

- [1] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (Perubahan I, II, III, dan IV).





- [2] Undang-Undang Republik Indonesia Nomor : 36 Tahun 2009 tentang Kesehatan.
- [3] Undang-Undang Republik Indonesia Nomor : 29 tahun 2004 tentang Praktik Kedokteran.
- [4] Undang-Undang Republik Indonesia Nomor : 44 tahun 2009 tentang Rumah Sakit.
- [5] Peraturan Menteri Kesehatan Republik Indonesia No. 3 Tahun 2020.
- [6] Undang-Undang Republik Indonesia Nomor : 8 tahun 1999 tentang Perlindungan Konsumen.
- [7] Peraturan Pemerintah Nomor 38 Tahun 2007 tentang Pembagian Urusan Pemerintahan antara Pemerintah, Pemerintah Daerah Provinsi dan Pemerintah Daerah Kabupaten Kota.
- [8] Novekawati, 2019. Hukum Kesehatan, Semarang: Sai wawai bekerjasama dengan UPPM Fakultas Hukum dan Ilmu Sosial Universitas Muhammadiyah Kotabumi.
- [9] Soekanto, 1975. Pengantar Hukum Kesehatan, Bandung: Remadja Karya.
- [10] M. Jusuf Hanafiah & Amri Amir, 2007. Etika Kedokteran & Hukum Kesehatan, Jakarta : Penerbit Buku Kedokteran EGC.
- [11] Asyhadie, Zaeni, 2017. Aspek-Aspek Hukum Kesehatan di Indonesia, Depok: PT. Raja Grafindo Persada.
- [12] Chazawi, Adam, 2015. Malapraktik Kedokteran, Jakarta: Sinar Grafika.
- [13] Isfandyarie, Anny, 2006, Tangung Jawab Hukum dan Sanksi Bagi Dokter, Jakarta : Prestasi Pustaka.
- [14] Donald Black, 1984. Crime as Social Control, Orlando : Academic Pres,
- [15] Achmad Ali, 1996. Menguak Tabir Hukum, Jakarta : Chandra Pratama Jakarta
- [16] Ameln. Fred, 1991, Kapita Selekta Hukum Kedokteran, Jakarta: Grafika Tama.
- [17] Astuti Endang Kusuma, 2009. Transaksi Tereapeutik Dalam Upaya Pelayanan Medis Di Rumah Sakit, Bandung: PT Citra Aditya Bakti.
- [18] Hanafiah, M. Jusuf dan Amri Amir, 1999. Etika Kesehatan dan Hukum Kedokteran, Jakarta: EGC.
- [19] Puwohadiwardoyo, Al, 1989. Etika Medis, Yogyakarta: Kanisius.
- [20] Ridwan, H. Juniarso dan Achmad Sodik Sudrajat, 2009. Hukum Administrasi Negara dan Kebijakan Pelayanan Publik Cet. I. Bandung : Nuansa.
- [21] Hafid Abbas, et.el., 2008. Buku Pedoman Hak Asasi Manusia bagi Dokter dan Pasien Dalam Mencegah Malpraktek Kedokteran, Jakarta: Badan Penelitian dan Pengembangan HAM Departemen Hukum dan HAM R.I.
- [22] Aziz, Noor M. 2010. Laporan Penelitian Hukum Tentang Hubungan tenaga Medik, Rumah Sakit, dan Pasien. Jakarta : Kemenkumham.
- [23] Nasution, Bahder Johan, 2005. Hukum Kesehatan Pertanggungjawaban Dokter. Jakarta : Rineka Cipta.
- [24] Ida Ayu Sri Kusuma Wardhani, 2014. “Implementasi Persetujuan Tindakan Kedokteran (Informed Consent) dalam Perjanjian Terapeutik oleh Tenaga Kesehatan Terhadap Pasien Rumah Sakit di Provinsi Bali”, Jurnal Magister Hukum Udayana, Program Pasca Sarjana Universitas Udayana, Volume 3, Nomor 1, h. 2.
- [25] Bayu Wijanarko dan Mudiana Permata Sari, 2014. “Tinjauan Yuridis Sahnya Perjanjian Teraapeutik dan Perlindungan Hukum Bagi Pasien”, Jurnal Hukum, Program Studi Ilmu Hukum Fakultas Hukum Universitas Sebelas Maret, (tanpa volume).
- [26] Rudy Hendra Pakpahan dan Eka N.A.M.Sihombing, 2013. Tanggung Jawab Negara Dalam Pelaksanaan Jaminan Sosial (Responsibility State in The Implementation of Social Security), Jurnal Legislasi Indonesia (Indonesian Journal of Legislation), Vol. 9 No. 2.
- [27] Sagung Ayu Yulita, 2004 (Perspektif Perlindungan Hukum Terhadap Pasien serta Pertanggung Jawaban atas Pelanggaran Perjanjian Terapeutik Berdasarkan Hukum Perdata), hal. 23.
- [28] Idah Rosida, 2012 “Setiap Orang Berhak Sehat”, lbhyogyakarta.org. Jawatengah hal.1,2, 3.
- [29] Elsam 2014, “Kesehatan sebagai Hak Asasi Manusia” Koleksi Pusat Dokumen Elsam, (Elsam.or.id, 2014).
- [30] Jaminan Kesehatan Masyarakat Salah Satu Cara Mensejahterakan Rakyat, <http://sanglahhospitalbali.com> diakses pada tanggal 16 November 2022.
- [31] Hak Pasien atas Pelayanan Kesehatan di Rumah Sakit, <http://m.hukumonline.com> diakses pada tanggal 18 Desember 2022.

- [32] Kamus Besar Bahasa Indonesia (KBBI) Online, <https://kbbi.web.id/perindungan>. diakses pada tanggal 1 Desember 2022
- [33] Rachmad, Edy, Kebijakan Dalam Pelayanan Kesehatan, <http://www.legalitas.org> diakses pada tanggal 17 Desember 2022.
- [34] UU ITE yang Memakan Korban, dari Prita Mulyasari hingga Baiq Nuril, [:https://nasional.kompas.com/read/2021/02/16/17092471/uu-ite-yang-memakan-korban-dari-prita-mulyasari-hingga-baiq-nuril](https://nasional.kompas.com/read/2021/02/16/17092471/uu-ite-yang-memakan-korban-dari-prita-mulyasari-hingga-baiq-nuril).diakses diakses pada 18 Maret 2023.