

Juridical analysis of user consumer protection health services (case study of Tiara Debora Simanjorang's death in hospital Kalideres family partner)

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ABSTRACT

Hospitals providing their services must pay attention to the quality of their services to patients as consumers. A large number of demands and lawsuits from patients to the hospital is clear evidence that there are still many patients who are dissatisfied with the services provided by the hospital. The problem that arises in the health services provided by the Kalideres Family Partner Hospital to Debora is the provision of services that are not optimal, causing losses to patients. The main problems in this study are 1) Whether there is a violation of consumer rights, and 2) How consumers can take efforts for the losses experienced. To answer the subject matter, normative research is carried out, data processing is carried out qualitatively, concluding using a deductive mindset. The conclusion of the study is 1) Violations of consumer rights occur due to the obligations of the Hospital as a service provider that are not done properly, namely not providing services to Debora safely, properly, and without discrimination, and 2) The efforts that can be taken by consumers based on applicable laws and regulations are through peace agreements, through the Consumer Dispute Resolution Agency and the courts.

ABSTRAK

Rumah Sakit dalam memberikan jasanya harus memperhatikan kualitas pelayanannya kepada pasien sebagai konsumen. Banyaknya tuntutan dan gugatan dari pasien kepada Rumah Sakit merupakan bukti nyata bahwa masih banyak pasien yang merasa tidak puas terhadap pelayanan yang diberikan oleh Rumah Sakit. Masalah yang muncul dalam pelayanan jasa kesehatan yang diberikan Rumah Sakit Mitra Keluarga Kalideres kepada Debora yakni pemberian jasa yang tidak maksimal sehingga menimbulkan kerugian bagi pasien. Pokok Permasalahan dalam penelitian ini adalah 1) Apakah terdapat pelanggaran terhadap hak-hak konsumen; dan 2) Bagaimana upaya yang dapat ditempuh oleh konsumen atas kerugian yang dialami. Untuk menjawab pokok permasalahan tersebut dilakukan penelitian secara normatif, pengolahan data dilakukan secara kualitatif, penarikan kesimpulan dengan menggunakan pola pikir deduktif. Kesimpulan penelitian adalah 1) Pelanggaran terhadap hak konsumen terjadi karena adanya kewajiban Rumah Sakit sebagai penyedia jasa yang tidak dilakukan dengan baik, yaitu tidak memberikan pelayanan kepada Debora dengan aman, layak dan tanpa diskriminatif dan 2) Upaya yang dapat ditempuh oleh konsumen berdasarkan peraturan perundang-undangan yang berlaku adalah melalui perjanjian perdamaian, melalui Badan Penyelesaian Sengketa Konsumen dan melalui pengadilan

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I. INTRODUCTION

Consumer protection law today receives quite a lot of attention because it concerns rules for the welfare of the community, not only the community as consumers who get protection, but business actors also have the same right to protection, each of which has rights and obligations. The government plays a role in regulating, supervising, and controlling, to create a system that is conducive to being interrelated with each other so that the goal of the welfare of the community at large can be achieved. (Celina Tri Siwi Kristiyanti, 2014)

Consumer protection is an indispensable part of healthy business activities. In healthy business activities there is a balance of legal protection between consumers and producers. The absence of balanced protection causes consumers to be in a weak position. Moreover, if the product produced by the manufacturer is a limited product, the manufacturer can abuse its monopolistic position. This, of course, can be detrimental to consumers. (Ahmadi Miru, 2011)

Efforts to improve the quality of human life in the health sector are a very broad and comprehensive effort, these efforts include improving public health, both physical and non-physical. In an effort to improve the quality of life and adequate health services, the government and the private sector provide health service institutions called hospitals. Hospitals providing individual health services that provide inpatient, outpatient and emergency services are provided for the benefit of the community in terms of health. Advances in science and technology in the health sector have developed rapidly and are supported by increasingly sophisticated health facilities, this development also affects professional services in the health sector which from time to time are also growing. Various ways of treatment are developed so that the consequences also increase, and the possibility of making mistakes is even greater. (Bahder Johan Nasution, 2005)

The large number of cases that occur as well as lawsuits on the part of patients involving a hospital as a result of patients who are dissatisfied or even harmed by the health services provided by the hospital are an indication that people's legal awareness is increasing. The more aware the public is of the rule of law, the more aware they are of their rights and obligations and the broader the voices demanding that the law play its role in the health sector. From what has been explained above, I as the author am interested in conducting research and analyzing by making a scientific paper (thesis) entitled: "Juridical Analysis of Consumer Protection of Health Service Users (Case Study of the Death of Tiara Debora Simanjorang at the Kalideres Family Partner Hospital)".

Based on the background description above, the main problems that can be formulated by researchers are as follows: Is there a violation of consumer rights and How can efforts be taken by consumers for losses suffered?

II. METHODS

The research on "Juridical Analysis of Consumer Protection of Health Service Users (Case Study of the Death of Tiara Debora Simanjorang at Mitra Keluarga Kalideres Hospital)" is a normative legal research, namely research that examines document studies, namely using various secondary data such as laws and regulations, court decisions, and legal theory. Normative legal research itself is divided upon: (Soerjono Soekanto & Sri Mahmudji, 2003) Research on legal principles; Research on legal systematics; Research on the level of legal synchronization; Legal history research; Legal comparative research. This research is a normative legal research that examines legal principles because it aims to examine positive law associated with the problem of protecting consumers of health services.

The nature of the research used in this study is descriptive analysis. A descriptive study is intended to provide as precise data as possible about humans, circumstances or other symptoms. In research that has a normative juridical nature of obtaining research results carried out by collecting and

processing secondary data qualitatively, qualitative methods are a way of research, namely analyzed in depth and comprehensively to obtain an understanding of primary and secondary legal materials. Conclusion making is carried out using a deductive mindset, namely drawing conclusions of a special nature from statements of a general nature, such as laws and regulations, legal science, legal theories and principles. (Soerjono Soekanto & Sri Mahmudji, 2002)

III. RESULT AND DISCUSSION

1. Business Actors' Violations of Consumer Rights

The incident that caused Debora's baby to die was caused by the discriminatory and not optimal service of the Kalideres Family Partner Hospital because Debora's baby at that time was in a critical condition so that it needed special health services for children in the PICU room and the hospital did not allow Debora's baby to get services in the room which was caused by the lack of fees that Debora's parents had to pay to the hospital in the amount of Rp. 19.800.000,-. Both of Debora's parents had given a sum of money first, amounting to Rp. 5,000,000, - but the hospital still refused Debora's baby to get services in the PICU room on the grounds that the cost was less. By charging advances made by Kalideres Family Partner Hospital to patients during emergencies is a violation because the hospital should be prohibited from asking for advances to patients who are in an emergency for any reason. ("Kasus Bayi Debora, Menkes Jatuhi Sanksi Tertulis Untuk RS Mitra Keluarga Artikel Ini Telah Tayang Di Kompas.Com Dengan Judul "Kasus Bayi Debora, Menkes Jatuhi Sanksi Tertulis Untuk RS Mitra Keluarga," 2017) If you look at the actions taken by the Kalideres Family Partner Hospital to Tiara Debora Simanjorang which are associated with regulations regarding the obligations of business actors in general as stipulated in Article 7 letter a and c of Law Number 8 of 1999 concerning Consumer Protection, it is clear that the hospital violates the following provisions; Business actors must assume good faith in carrying out their business activities; Business actors must treat or serve consumers correctly and honestly and are not discriminatory.

Kalideres Family Partner Hospital as a business actor does not carry out its business activities in good faith. The good faith referred to here is that the Hospital in providing its services to every patient must not look at the economic condition of patients both capable and incapable because the Hospital is obliged to provide proper health services for all patients without exception. The good faith that was not done by the Hospital in this case can be seen when the hospital refused baby Deborah to be served in the PICU room. Business actors are prohibited from discriminating against consumers in providing services. Business actors are also prohibited from discriminating against the quality of service to consumers.

In Law Number 36 of 2009 concerning Health, it stipulates that hospitals are obliged to provide health service facilities for patients who are in an emergency and are prohibited from rejecting patients who are in an emergency, even hospitals cannot ask for down payments to emergency patients as stipulated in Article 32 paragraphs (1) and (2) of Law Number 36 of 2009 concerning Health, that is: (Undang-Undang Nomor 44 Tahun 2009 Tentang Rumah Sakit, Pasal 32 Huruf c, d Dan e, n.d.) In an emergency, health service facilities, both government and private, are required to provide health services to save the lives of patients and prevent disability in advance; In an emergency, health care facilities, both government and private, are prohibited from rejecting patients and/or asking for advance payments. Looking at the Health Law Article 32, Kalideres Family Partner Hospital as a provider of private health service facilities clearly does not carry out its obligations as a business actor, namely providing health services to save the lives of patients who are in an emergency because if it is related to the chronology of the case that the victim's family has described, the hospital has refused baby Debora who is in an emergency to get special health services for children in the PICU room even though it is clearly stated that health service facilities, both government and private, are prohibited from rejecting patients who are in an emergency.

The hospital should also not be allowed to ask for a down payment to patients who are in an emergency (Tri Jata Ayu Pramesti, 2014) however, based on the chronology of the case that Debora's family has explained, the hospital still asks Debora's parents for a sum of Rp. 19,800,000. Therefore, the hospital violated the provisions regarding the prohibition of asking emergency patients for advances. Several regulations regarding consumer rights in general are violated by the Kalideres Family Partner Hospital as stipulated in Article 4 letters a and g of the UUPK, namely: The right to comfort, security, and safety in consuming goods and / or services; The right to be treated or served properly and honestly and non-discriminatory.

When looking at the UUPK in Article 4, letters a and g which are directly related to the chronology of the cases that have been explained, it is clear that there is a violation of Debora's rights, namely the right to safety in consuming services because Debora as a patient did not get proper services, namely services in the PICU room from the hospital, causing Debora to die. Deborah also did not get her right to be served non-discriminatory, this was seen when Deborah did not get services in the PICU room due to lack of costs.(Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen, Pasal 4 Huruf a Dan g, n.d.)

The violation of Tiara Debora Simanjorang's rights can be seen in the fact that patients do not get safe, decent and non-discriminatory services. Patient rights violated based on Article 32 letter c, d and e of Law Number 44 of 2009 concerning Hospitals, namely: (Undang-Undang Nomor 44 Tahun 2009 Tentang Rumah Sakit, Pasal 32 Huruf c, d Dan e, n.d.) Obtaining services that are humane, fair, honest, and without discrimination; Obtaining quality health services in accordance with professional standards and standard operating procedures; Obtaining effective and efficient services so that patients avoid physical and material losses..

Based on the above provisions, it is clear that the hospital has violated Tiara Debora Simanjorang's rights as a patient because Debora did not get fair services and without discrimination due to lack of hospital fees. Baby Debora also does not get effective and efficient services so as to avoid physical losses, this can be seen when Debora is not allowed to get services in the PICU room and causes Debora's baby to die, because this effective and efficient service can only be done if Debora's baby gets special services in the PICU room.

Violation of Debora's rights as a patient can also be seen from Article 52 letter c of Law Number 29 of 2004 concerning the Practice of Medicine, namely that patients are entitled to services in accordance with medical needs. The service according to medical needs here is when Debora's baby needs medical services in the PICU room for his life safety but the hospital does not give permission and in the end Debora dies.(Undang-Undang Nomor 29 Tahun 2004 Tentang Praktik Kedokteran, Pasal 52 Huruf c, n.d.)

2. Efforts That Can Be Taken By Consumers

Article 29 of Law Number 36 of 2009 concerning Health explains that if health workers are suspected of negligence in carrying out their profession, then the negligence must first be resolved through mediation. This article is intended specifically for health workers, not for hospitals. The provisions in the Article clearly prioritize mediation first to resolve disputes. The losses suffered by Tiara Debora Simanjorang resulted from the non-fulfillment of Debora's rights as a consumer of the services provided by the Kalideres Family Partner Hospital, causing disputes between the two parties. With the death of Tiara Debora Simanjorang, Debora's parents as the aggrieved party have the right to pursue legal remedies so that they can get compensation for losses suffered by the family.

Both of Debora's parents have the right and can file a lawsuit against violations committed by the Kalideres Family Partner Hospital, this refers to Article 46 of the UUPK that both of Debora's parents are the heirs of the consumer concerned so that they have the right to claim damages to the hospital.

The Consumer Protection Law stipulates the efforts that consumers can make if there is a loss to consumers due to the fault of business actors. In Article 23 of the UUPK, if the business actor does not provide compensation to the consumer, the consumer has the right to file a lawsuit or claim against the business actor and resolve the dispute through the Consumer Dispute Resolution Agency or by filing a lawsuit with the judicial body. (maria, 2020)

If the consumer chooses the dispute resolution route through BPSK, BPSK itself has a choice of the mechanism through conciliation, mediation, or arbitration, but if the consumer does not choose BPSK, other efforts that can be taken are through the litigation process by filing a lawsuit in the District Court. (Tami Rusli, 2012) With reference to Article 45 of the UUPK which allows several ways of resolving consumer disputes, including: A peace agreement carried out by both parties to the dispute without involving any party; Dispute resolution through courts that refer to applicable laws and regulations; Dispute resolution through the Consumer Dispute Resolution Agency.

Based on the above provisions, the family of Tiara Debora Simanjorang has the right to file a lawsuit from these various options, either through an agreement between Debora's parents and the hospital, through BPSK, or through the District Court. The settlement of consumer disputes does not rule out the possibility that both parties agree to reconcile. All stages carried out will be attempted first by means of peace. If Debora's parents want to solve their problems with the hospital through a peace agreement, then there will be several agreements that both parties must fulfil based on the demands of Debora's parents and the hospital.

Both of Debora's parents can also choose dispute resolution through the services of the Consumer Dispute Resolution Agency. BPSK is an institution in Indonesia that is authorized to resolve disputes that occur between consumers and business actors. If the settlement is through BPSK, then one of the parties cannot stop the case halfway. Dispute resolution through BPSK can take place quickly because it only takes 21 working days and BPSK is obliged to give its verdict. The BPSK decision that both parties have accepted has final and binding force. (Rachmad Usman, 2012)

Consumers who are harmed by complaining about their problems to BPSK directly or indirectly by providing a power of attorney. (Rifqani Nur Fauziah Hanif, 2020) Dispute resolution through BPSK is intended to reach a major agreement on compensation and form of compensation between the parties to the dispute. The amount of compensation is assessed from the losses suffered by consumers and demands filed by consumers. There are several ways to resolve consumer disputes through BPSK, namely:

a. Mediation

If Deborah's parents choose by way of mediation, then in this way, the mediator is only as an intermediary to resolve the existing issues and leave the entire dispute resolution process to the parties.

b. Conciliation

If the Deborah family chooses in this way, then in this way, the BPSK assembly is only a passive intermediary and fully submits the agreement to both parties to the dispute.

Based on the way of dispute resolution, dispute resolution is carried out in stages, if it fails in mediation, there is still conciliation. If in the conciliation proceedings still do not find agreement then there is also arbitration. Furthermore, under Article 56 of the UUPK, parties who disagree with the BPSK decision can file an objection with the District Court. Not only until the District Court, in Article 58 of the UUPK, if one of the parties does not agree with the decision issued by the District Court, the parties can still file the next legal remedy, namely filing an appeal to the Supreme Court. The period of time given in filing an appeal is 14 days after the District Court's decision is issued. The Supreme Court itself was given 30 days from the appeal to issue a judgment. (Muskiyah, 2010)

If the victim directly chooses to resolve the dispute through the court, then the form of dispute resolution is through an ordinary civil lawsuit. Based on Article 45 of the UUPK, this ordinary civil

lawsuit process will be filed by the Debora family to the Kalideres Family Partner Hospital through the District Court. The UUPK does provide room for Criminal prosecution. But this is the final attempt as ultimum remedium when administrative and civil efforts have been pursued and stalemate.

IV. CONCLUSION

Violations of the rights of Tiara Debora Simanjorang that occurred were in article 4 letter a and g of the UUPK, Article 32 letter c, d, and e of Law Number 44 of 2009 concerning Hospitals and Article 52 letter c of Law Number 29 of 2004 concerning the Practice of Medicine. Violation of consumer rights occurs due to the hospital's obligations as a service provider that are not done well, namely not providing services to Debora safely, properly and without discriminatory.

With the violation of the rights of the patient that causes harm to the patient, the patient as an aggrieved consumer can file legal remedies to claim compensation for what he experienced to the Hospital as a business actor. Several legal remedies that can be filed by consumers have been regulated in the Law, namely through the peace route, through BPSK, or through a lawsuit to the District Court.

V. ADVICE

Hospitals in the future must provide maximum service to all patients and must not treat patients in a discriminatory manner due to lack of medical expenses. Hospitals as business actors in the future must pay more attention to patient rights and carry out all their obligations properly in accordance with applicable laws and regulations so that patients as consumers avoid losses suffered as a result of using their services and hospitals avoid prosecution. Hospitals as business actors who have provided services to patients must be responsible for losses suffered by patients. The government should pay more attention to the supervisory duties of hospitals in providing health services to the public.

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