

## **LEGAL PROTECTION OF CANCER PATIENTS' SOCIAL SECURITY PARTICIPANTS IN TARGETING THERAPY SERVICES IN HOSPITAL**

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### **Abstract**

The purpose of this study is to analyze laws and regulations as legal protection for social security participants in targeting therapy services in hospitals and to analyze the responsibility of the hospital for targeting therapy services. Legal protection for cancer patients participating in social security in targeting therapy services in hospitals in accordance with what is regulated in the 1945 Constitution, then Law Number 29 of 2004 concerning Medical Practice; Law of the Republic of Indonesia Number 36 of 2009 concerning Health, which shows that the state is present in providing protection and legal protection to its people. So in practice in the field, both hospitals and medical personnel must stick to this rule so that cancer patients participating in social security receive optimal service in accordance with the latest scientific principles of medicine without violating applicable laws so as to create harmony between optimal patient treatment and applicable law. Hospital responsibility for targeting therapy services is crucial/important where hospitals have criminal responsibility regulated in the Criminal Code, civil liability related to default and unlawful acts as stated in the Civil Code and also administrative responsibility which is regulated in the medical rules.

**Keywords:** Targeting therapy, Hospital responsibility, Legal Protection

**INTRODUCTION**

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. maximum implementation based on non-discriminatory, participatory, protective and sustainable principles which are very important for the formation of Indonesian human resources, increasing the resilience and competitiveness of the nation, as well as national development.

In line with the mandate of Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it has been emphasized that everyone has the right to obtain health services, then in Article 34 paragraph (3) it is stated that the State is responsible for the provision of health service facilities and public service facilities. worthy. Hospitals as one of the health service facilities are part of the health resources that are needed to support the implementation of health efforts. The delivery of health services in hospitals has very complex characteristics and organization. Various types of health workers with their respective scientific devices interact with each other.

The laws and regulations that are used as the basis for the organization of hospitals are currently still at the Ministerial Regulation level which are no longer suitable for needs. In order to provide legal certainty and protection to improve, direct and provide a basis for hospital management, a legal instrument that regulates hospitals as a whole is needed in the form of a law, then Law Number 44 of 2009 concerning Hospitals (UU RS) was issued. , the law is a new legal regulation regarding hospitals replacing the old rules.

In essence, the hospital functions as a place to cure disease and restore health and this function means responsibility, which should be the responsibility of the government in improving the level of social welfare. The laws and regulations that are used as the basis for the administration of hospitals are Law No. 44 of 2009 concerning Hospitals. The existence of this law is intended to provide certainty and legal protection to improve, direct and provide a basis for hospital management. On the other hand, health workers (especially paramedics) as one of the main components 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. basically the main basis for paramedics to be able to perform medical actions on other people is the knowledge, technology, and competencies they have, which are obtained through education and training.

The knowledge they have must be continuously maintained and improved in accordance with the progress of science and technology itself. Health workers (especially paramedics) with their scientific devices have unique characteristics. This uniqueness can be seen from the justification given by law, namely the permissibility of carrying out medical actions on the human body in an effort to maintain and improve health status. Medical action against the human body carried out by non-health workers can be classified as a criminal act. The knowledge they have must be continuously maintained and improved in accordance with the progress of science and technology itself. Health workers (especially paramedics) with their scientific devices have unique characteristics.

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Reduced public trust in health workers (especially paramedics), the rise of lawsuits filed by the public today is often identified with the failure of healing efforts and services that are not in accordance with standards and procedures. On the other hand, the lack of understanding of the medical community (doctors, nurses and hospitals) regarding the legal aspects of their profession is also a cause of medical disputes. This can be prevented if the medical community (and also society) understands the limits of each other's rights and responsibilities when providing or receiving health services.

The main director of the Health Social Security Administration Agency (BPJS), Ghufroon Mukti, revealed that cancer is still one of the diseases that occupies the highest position in the utilization of health services, both based on the number of cases and based on the absorption of the largest costs. Meanwhile, based on the cost of health services, cases of breast cancer also occupy the top position in the utilization of costs followed by cases of cancer of the digestive organs and cancer of the female reproductive organs. In the implementation of insurance for cancer health services, there are various challenges that must be addressed both by BPJS Kesehatan and other stakeholders, such as the uneven distribution of hospitals capable of providing services to cancer patients, as well as the distribution of doctors and medical equipment.<sup>1</sup>

Social security patients with cancer are served by BPJS Kesehatan in collaboration with 714 hospitals with chemotherapy facilities, 507 hospitals with oncology boards, and 35 hospitals with radio therapy facilities spread throughout Indonesia. In addition, promotive and preventive efforts at first-level health facilities (FKTP) are also encouraged to reduce the growth rate of cancer patients.<sup>2</sup>

Member of Commission IX of the House of Representatives (DPR) Dewi Asmara said Indonesia needed a law (UU) on cancer like other countries. "There are quite a number of cancer patients in Indonesia. Around 4.8 million Indonesians suffer from cancer, unfortunately there are no regulations regarding this matter," said Dewi when opening the parade to commemorate world cancer day (WCD) in Jakarta.<sup>3</sup>

The state has been present with the implementation of the National Health Insurance (JKN) program through the institutional mechanism of the Health Social Security Administration Agency (BPJS). However, the presence of the State is not total. This absence can be seen from a number of incidents that befell the community when they access health. From slow care and treatment services, rejection by a number of hospitals for patients with BPJS, to termination of guarantees for certain drugs by BPJS.<sup>4</sup>

Targeted therapy or targeted therapy is treatment using drugs to stop the growth and spread of cancer cells. Although they both use drugs, targeted therapy is somewhat different from chemotherapy. While chemotherapy can affect normal cells, targeted therapy does not.

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<sup>1</sup>Health BPJS, Improving Cancer Treatment Services Requires Synergy and Collaboration of All Parties in 2022, <https://www.bpjs-kesehatan.go.id>, accessed on February 23, 2023, at 20.15 WITA

<sup>2</sup>BPJS Health, BPJS Health Encourages Optimal Health Facilities for Cancer Patients in 2021, <https://www.bpjs-kesehatan.go.id>, accessed on February 23, 2023, at 20.30 WITA

<sup>3</sup>Indriani, Legislator: Indonesia Needs a Law on Cancer, Antara accessed 23 February 2023, 22.00 WITA, h.12

<sup>4</sup>Don't Make It Difficult for Cancer Patients, Media Indonesia, March 5 2019, p.11

This therapy only targets certain molecules or proteins that control cancer cells to grow, divide, and spread. Therefore, this therapy is one of a kind cancer treatment the important one.<sup>5</sup>

Decree of the Minister of Health Number: HK.01.07/Menkes/707/2018, December 19 2018, drug targeting therapy is given in type A or B hospitals, in cases with positive biomarkers and given at an advanced stage (metastasis). Based on the National Comprehensive Cancer Network (NCCN) and European Society For Medical Oncology (ESMO), which is an association of cancer treatment experts in America and Europe which provides recommendations for administering targeted drug therapy in the treatment of cancer patients with biomarkers according to the targeting of therapy, where this institution recommends the administration of targeted therapy drugs as early as possible to prevent the spread of cancer.<sup>6</sup>

Law Number 40 of 2004 concerning the National Social Security System has also mandated that everyone has the right to social security to be able to meet the basic needs of a decent life. To achieve this perfection, the state must ensure that their presence in the health sector is truly total<sup>7</sup>. Based on the above background, the purpose of this study is to analyze legislation as legal protection for social security participants in targeting therapy services in hospitals and to analyze the responsibility of the hospital for targeting therapy services.

## RESEARCH METHODS

This research is a normative legal research in which a normative study is carried out on the rules or norms that apply to the problem at hand<sup>8</sup>. Normative juridical research is research that is carried out based on the main legal material by examining the theories, concepts, legal principles and laws and regulations related to this research. This research is also known as library research, namely by studying books, laws and regulations and other documents related to research. This study uses a statutory approach (statute approach) and a conceptual approach (conceptual approach). The statutory approach (statute approach) is usually used to examine statutory regulations which in their norms still lack or even foster deviant practices both at the technical level and in their implementation in the field.<sup>9</sup>

## RESULTS AND DISCUSSION

### Legal Aspects of Legislation - Invitation to Targeting Therapy Services in Hospitals

The hospital as an organ that was originally established based on social, humanitarian or religious goals in its history of growth has experienced development, so that the hospital functions to bring together 2 (two) principal tasks that distinguish it from other organs that produce services. The hospital is an organ that brings together tasks based on the postulates of medical ethics because it is a place of work for professionals with the pronouncement of a medical oath bound by Hippocrates' postulates is an oath traditionally made by doctors regarding the ethics they must follow in practicing their profession. in doing their job.<sup>10</sup>

Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals, Article 1 (1) a hospital is a health service institution that organizes full individual health services, which provides inpatient, outpatient and emergency services. Whereas Article 2 states that hospitals are organized based on Pancasila and are based on human values, ethics and professionalism, benefits, justice, equal rights and anti-discrimination, equity, patient protection and safety, and have a social function. The purpose of running a hospital cannot be separated from the provision that the public has the right to health as formulated in various provisions of the Law

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<sup>5</sup>Kresno, Basic Science of Oncology, Third Print, Jakarta FKUI, 2012, p.438

<sup>6</sup>Azril, Breast Cancer, Second Edition, Surabaya, Airlangga University. 2012, p.125

<sup>7</sup>BPJS: Principles, Types, Duties, Authorities, Organs and Tariffs, Kompas, on 15 January 2020, h.12

<sup>8</sup>Sudikno Mertokusumo, Legal Invention: An Introduction, Liberty, Yogyakarta, 2006, p.29

<sup>9</sup>Ibid, p.321

<sup>10</sup>Hermein Hadiati Koeswadji, Law for Hospitals, Citra Aditya Bakti, Bandung, 2002, h. 188-189

of the Republic of Indonesia Number 36 of 2009 concerning health.<sup>11</sup>

Developments in the medical world greatly affect the function of the hospital as a provider of health services. Hospitals often experience health service crises, because the function of the hospital is not only a place for treatment but its services include activities that are curative, rehabilitative, promotive and preventive, the limits of authority and ethical responsibilities of health workers in hospitals must comply with professional standards, because every medical action taken has a legal relationship between the hospital, doctor and patient. Legal protection for doctors when suspected of committing medical malpractice consisting of: legal bases that provide legal protection for doctors in carrying out the medical profession, things doctors must do to avoid being prosecuted, and reasons for the abolition of punishment against doctors suspected of medical malpractice. The legal bases that provide legal protection for doctors in carrying out the medical profession. Legal provisions that protect doctors in the event of an alleged malpractice are contained in Article 50, Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice, Article 24 Paragraph (1), in conjunction with Article 27 Paragraph (1) and Article 29 of the Law of the Republic of Indonesia Number 36 of 2009 About Health.

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia. Furthermore, Law Number 36 of 2009 provides strict arrangements regarding the certainty of quality service delivery for service users, namely the public.<sup>12</sup>

The implementation of quality services in the health sector cannot be separated from the quality of human resources that provide these services. If, referring to Article 22 of Law Number 36 of 2006 concerning Health, service providers or health workers must have minimum qualifications. This qualification must also be proven by a license granted by the government. Given the importance of the role of service providers in the health sector, this should also be balanced with legal protection.<sup>13</sup>

Targeting therapy services in Indonesia for BPJS participants are a new thing. To expedite the service and use of this drug, the government has issued regulations so that the protection and utilization of targeting therapy for BPJS participants can be effective and efficient. The targeting therapy services in hospitals for BPJS participant patients with cancer are regulated by several regulations:<sup>14</sup>

1. Regulation of the minister of health governing targeting therapy
  - a. Permenkes Number HK.01.07/Menkes/707/2018 concerning changes to the decision of the Minister of Health Number HK.01.07/Menkes/659/2017 concerning the National Formulary.
  - b. Permenkes Number HK.01.07/MENKES/350/2020 regarding changes to the decision of the Minister of Health Number HK.01.07/MENKES/813/2019 concerning the National Formulary
2. Permenkes restricts targeting therapy

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<sup>11</sup>Endang Wahyati Yustina, *Getting to Know Hospital Law*, Keni Media, Bandung, 2012, h. 8

<sup>12</sup>Bellinda W., *Legal Protection for Health Service Providers Through an Administrative Law Approach*, in <https://ombudsman.go.id/artikel/r/artikel>. Accessed on May 17 2023, 19.00 WITA.

<sup>13</sup>Sibrina, *Addressing Health Problems in Hospital Services*, <https://kompasiana.com>. Accessed on May 17 2023, 19.00 WITA

<sup>14</sup>Ulfah Hanum, *Decree of the Minister of Health*, <https://www.slideshare.net/ulfahhanum.pdf>. Accessed on May 17, 2023, at 22.00 WITA

Based on the Regulation of the Minister of Health of the Republic of Indonesia Number 22 of 2018 concerning Technical Guidelines for Restricting the Use of Trastuzumab (Targeting Therapy) for metastatic breast cancer in national health insurance services.

### **Responsibilities of Criminal, Civil and Administrative Targeting Therapy Services**

The hospital as an institution consists of a group of people in the form of health workers who work together in an organized and directed manner to carry out a certain agreed goal. Based on this working relationship, health workers carry out their duties in providing health services to patients who come to them.

#### **1. Administrative Responsibilities**

Regarding the negligence of health workers Article 46 of Law no. 44 of 2009 strictly regulates "hospitals are legally responsible for all losses incurred due to negligence committed by health workers at the hospital." Hospitals as institutions that accommodate health workers can no longer be separated from responsibility for losses arising from negligence committed by health workers in carrying out their service duties. All losses incurred by health workers while within the scope of the work relationship are fully borne by the hospital. The problem is whether the form of hospital criminal responsibility for all actions of health workers within the scope of their work has provided legal protection for the hospital for any losses incurred by health workers.

Health workers in carrying out their duties often or often make their own negligence and cause harm to patients. In the hospital criminal liability legislation policy, article 46 of Law no. 44 of 2009 expressly defines hospital accountability as follows: "hospitals are legally responsible for all losses incurred due to negligence committed by health workers at the hospital." A negligence is an indication of irregularities in health services which if it results in disability or death is a criminal law study. The formulation of hospital legal responsibility in this provision is very different when compared to the formulation of corporate legal responsibility in other laws. such as the regulation of corporations in some of the legal provisions above shows the recognition that corporations can be seen as subjects of criminal law. A new corporation can be said to be legally responsible when it has been proven that the intended action was actually carried out by and on behalf of the corporation. When compared with the formulation of hospital accountability as stipulated in article 46 of Law no. 44 of 2009 "hospitals are legally responsible for all losses incurred due to negligence committed by health workers at the hospital," so hospitals have a very broad legal responsibility for all losses incurred. A new corporation can be said to be legally responsible when it has been proven that the intended action was actually carried out by and on behalf of the corporation. When compared with the formulation of hospital accountability as stipulated in article 46 of Law no. 44 of 2009 "hospitals are legally responsible for all losses incurred due to negligence committed by health workers at the hospital," so hospitals have a very broad legal responsibility for all losses incurred.

#### **2. Criminal and Civil Liability**

Hospital criminal responsibility originates from the law through Article 46 of Law no. 44 of 2009, although basically hospitals have legal responsibility for every action taken by health workers who work for them, it is specifically a criminal responsibility.

Schaffmeister emphasized the relationship of criminal liability where, the nature and purpose of the arrangement has shown an indication for the criminal maker, it is not important for the final proof of the criminal maker, whether the act is in accordance with the objectives of the statute of the legal entity and or in accordance with company policy, it is enough that the action is in accordance with the scope of work. Thus when health workers perform health services in a work relationship, the hospital is legally responsible. Regarding the form or model of criminal responsibility for the hospital itself, it must be compared with the form and model of responsibility that applies in criminal law. Mardjono Reksodiputro emphasized the 3 accountability models that have been in force so far, namely:

- a. The corporate management as the maker and administrator is responsible;
- b. Corporations as creators and administrators are responsible;
- c. The corporation as maker and also as responsible.

The responsibility of hospitals in Indonesia is regulated in article 46 of the Hospital Law which states that hospitals are legally responsible for all losses incurred due to negligence committed by health workers at the hospital. There are two meanings contained in this arrangement. First, the hospital is only responsible for negligent errors and not intentional errors. This is because, intentional mistakes are acts that are classified as criminal because there are mens rea (the perpetrator's inner attitude when committing a crime) and actus reus (an act that violates the criminal law).

Second, the negligence was carried out by health workers during or in the context of carrying out tasks given by the hospital. Centralized responsibility to the hospital is also emphasized in Article 32 (q) of Law Number 44 of 2009 concerning Hospitals which states that every patient has rights, one of which is to sue and or sue the hospital if the hospital is suspected of providing services that are not in accordance with both civil and criminal standards.

The emergence of various interpretations regarding the legal responsibility of hospitals as stipulated in the Hospital Act and the development of the vicarious liability doctrine, in several cases caused inconsistencies in court decisions. Of course, this is a burden, especially for justice seekers. Therefore, it is necessary to reconstruct the pattern of legal responsibility for hospitals in Indonesia. Things doctors should do to avoid lawsuits.

a. *Informed Consent*

In carrying out his profession, informed consent is an obligation that must be fulfilled by a doctor. Informed consent consists of two words, namely "informed" which means explanation or information (information), and the word "consent" which means approval or giving permission. Thus informed consent implies an agreement given by the patient or his family after receiving information on the medical action to be performed on him and all the risks.

b. *Medical record*

In addition to informed consent, doctors are also obliged to make medical records in every health service activity for their patients. Medical record arrangements are contained in Article 46 paragraph (1) of the Medical Practice Act. Medical record is a file that contains notes and documents regarding patient identity, examination, treatment, actions and services provided to patients. Medical records are made with various benefits, namely for patient treatment, improving service quality, education and research, financing, health statistics and proving legal, disciplinary and ethical issues. Health services have characteristics that are different from other services/products, namely consumer ignorance, supply induced demand / influence of health service providers on consumers (consumers do not have bargaining power and choice), health service products are not homogeneous concepts, restrictions on competition, uncertainty about illness, and health as human rights.

In this case, the patient is actually a liveware factor. Patients must be seen as subjects who have a major influence on the final outcome of services, not just objects. The patient's rights must be fulfilled considering that patient satisfaction is one of the barometers of service quality, while patient dissatisfaction can be the basis for lawsuits. Patients must be seen as subjects who have a major influence on the final outcome of services, not just objects. The patient's rights must be fulfilled considering that patient satisfaction is one of the barometers of service quality, while patient dissatisfaction can be the basis for lawsuits. Patients must be seen as subjects who have a major influence on the final outcome of services, not just objects. The patient's rights must be fulfilled considering that patient satisfaction is one of the barometers of service quality, while patient dissatisfaction can be the basis for lawsuits.<sup>15</sup>

### **Protection of the Rights of Cancer Patients in Targeting Therapy Services**

According to Philipus M Hadjon, legal protection can be divided into two, namely:

- 1) Preventive Legal Protection  
Protection provided by the government with the aim of preventing a violation from occurring. This protection is regulated in laws and regulations with the intention of preventing a violation and providing signs or limitations in carrying out an obligation.
- 2) Repressive Legal Protection  
Repressive legal protection is the final protection in the form of sanctions such as fines, criminal sanctions, and additional penalties given when a dispute has occurred or a violation has been committed.

The increasing public need for health services, the growing development of regulations, and the role of laws in helping improve health services, are reasons that are driving factors for the government and health and legal service providers to improve by providing medical services for legal protection and legal certainty. In this case the government and medical service providers or hospitals are responsible for ensuring that their health care development goals achieve optimal results through the use of health workers, facilities and infrastructure. As stated in Article 28A of the 1945 Constitution, namely that all people have the right to live and defend their lives.

To protect patients from errors and negligence in health services, in 1992 Law Number 23 of 1992 concerning Health was promulgated and in 1999 Law Number 8 of 1999 concerning Consumer Protection was promulgated. Regarding the position of patients as consumers of health services and doctors/health workers as business actors in the field of health services, there is still debate. Those who argue that the position of patients as consumers of health services and doctors / health workers as business actors in the field of health services argue that patients should always be guided by Law Number 8 of 1999 concerning Consumer Protection. This is based on the Decree of the Minister of Health 756/2004, stating that health services are included in business. In fact, the World Trade Organization (WTO) includes hospitals, doctors, midwives and nurses as business actors. Thus it is clear that the position of the patient is as a consumer and doctors/health workers and hospitals as business actors, therefore the application of Law Number 8 of 1999 concerning Consumer Protection is appropriate.

Social Security System for all Indonesian people. For In addition, Law Number 40 of 2004 concerning the National Social Security System (SJSN)

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<sup>15</sup>Roberia & Minanda, Evie Flamboyan, 2009, "Implications of Malpractice Lawsuits carried out by the patient against the doctor in the delivery of services Health", *Journal of Law and Health* Vol. 2 No. 4, 87-10



also emphasizes that health insurance is a form of social protection. In essence, health insurance aims to ensure that all people can meet their basic needs for a decent life.

## CONCLUSIONS

Legal protection for cancer patients participating in social security in targeting therapy services in hospitals in accordance with the 1945 Constitution, Law Number 8 of 1999 concerning Consumer Protection, Law Number 29 of 2004 concerning Medical Practice; Law of the Republic of Indonesia Number 36 of 2009 concerning Health, all of which provide protection to patients (including cancer patients) while receiving medical services. Hospital responsibility for targeting therapy services is crucial/important where hospitals have civil responsibility based on Article 351 of the Criminal Code, Article 359 of the Criminal Code and Article 1365 of the Civil Code and Article 1367 of the Civil Code regarding the problem of errors or negligence by the health worker profession in carrying out their duties.

Hospital criminal liability legislation policy based on article 46 of Law no. 44 of 2009 where the hospital is legally responsible for all losses incurred due to negligence committed by health workers at the hospital. Administratively, if a hospital does not fulfill administrative obligations or requirements based on Article 46 of the 2009 Hospital Law, the hospital may be subject to administrative sanctions in the form of a warning, written warning, operational license not being extended, and/or fines and license revocation. In Article 27 to Article 53 of Government Regulation Number 47 of 2021 concerning the Implementation of the Hospital Sector, violations of the obligations referred to in the Hospital Sector are subject to administrative sanctions

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