

How Far is Consumer Protection in the Health Care Sector?

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ABSTRACT. In health services, it is not uncommon to cause malpractice due to negligence committed by health workers who are not in accordance with professional standards. This paper is intended to analyse concerning to how to protect consumers, the form of legal protection for patients as consumers of medical services and the forms of responsibility of hospitals and doctors as parties to medical services according to Law No. 8 of 1999 concerning Consumer Protection and Law No. 36 of 2009 concerning Health. To answer the question used the normative legal research method, the approach used in legal research is the statute approach), and case approach. In the Decision of Central Jakarta District Court No. 287/PDT.G/BTH/2011/PN.JKT.PST) there are 5 (five) rights of consumers who have been neglected by business actors according to Law Number 8 of 1999 concerning Consumer Protection, namely Article 4 points (a), (c), (d), (e), (g), and (h), and according to the Law Number 36 of 2009 concerning Health of consumer rights that are violated is in Articles 5-8, Articles 56-58. Regarding the responsibility given by business actors (RSCM) to consumers (Nina Dwijayanti) in the form of money amounting to Rp 1,776,010,000.00 (one billion seven hundred seventy-six million ten thousand rupiah), in Article 19 paragraph (2) the Consumer Law only recognizes just material compensation but according to Article 46 of Law No.44 of 2009 concerning this compensation house is appropriate.

KEYWORDS. Consumer Protection; Health Care; Malpractice; Health Law; Criminal Law

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Introduction

Equality in health is defined as the absence of differences that can be avoided or corrected between groups of people. Humans as social beings (*zoon politicon*)² are creatures that cannot live alone, and therefore humans always need the presence of other humans to interact in meeting their various needs.³ One of them in terms of health which has an important role for

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² Zoon Politicon is a term used by Aristotle to refer to social beings. The word *Zoon Politicon* is an equivalent word from the word Zoon which means “animal” and the word *politicon* which means “sociable”. Zoon Politicon literally means a social animal. In this opinion, Aristotle explained that humans are predestined to live in society and interact with one another, a thing that distinguishes humans from animals. Meanwhile, according to Adam Smith, he called the term social beings with *Homo Homini socius*, which means humans become friends for other humans. In fact, Adam Smith refers to humans as economic creatures (*homo economicus*), beings who tend to never be satisfied with what they get and always try to continuously meet their needs. Whereas Thomas Hobbes uses the term *Homini Lupus* to refer to humans as social creatures, which means that one human being becomes a wolf for other humans. See Herbert Gintis, and Carel van Schaik. “Zoon Politicon: The evolutionary roots of human sociopolitical systems.” *Cultural evolution*, 2013, pp. 25-44; Herbert Gintis, et al. “Zoon politicon: The evolutionary roots of human hypercognition.” In *Cultural Evolution*. MIT Press, 2012, pp. 45-46.

³ Even further, it was stressed that humans as social beings (*zoon politicon*) so that they complement each other. From the existence of this relationship, each of these individuals has obligations and rights in society that are guided by existing norms, so as to create a safe and secure state when there is no violation of norms. Crimes are sourced from the community, the community that provides the opportunity and the community itself that bears the consequences of the crime, although not directly. Acts of theft and crime are one form of crime that will

humans, human efforts to meet the needs of health services are also inseparable from other human assistance, especially in conducting treatment and healing. However, because the knowledge of patients is limited, then the patient and his family will seek help from health workers.

In jurisprudence, the relationship that occurs between a doctor and his patient can be classified in the scope of civil law, namely the law that all basic laws governing individual interests, or also often interpreted as a law governing the relationship of a person (one party) with a other person (another party).⁴ In this field the parties who are the subject of the civil law are patients, doctors, and hospitals.

According to the law, the relationship between a doctor and a patient is an engagement whose object is in the form of medical services, namely the healing efforts undertaken by doctors to cure patients.⁵ The engagement

continue to exist in society which is part of the balance between virtue and sleaze. See Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, Yogyakarta, Liberty, 2005, pp.10-15; Mark Levene, and Trevor Fenner, A problem in human dynamics: modelling the population density of a social space, *Journal of Building Performance Simulation* 13(1), 2020, pp.112-121; Alfred Schütz, Helmut Staubmann, and Victor Lidz, The problem of rationality in the social world. *Rationality in the Social Sciences*, Springer, Cham, 2018, pp. 85-102; Dominique Clément, Human rights or social justice? The problem of rights inflation. *The International Journal of Human Rights* 22(2), 2018, pp. 155-169; Alexander Rosenberg, *Philosophy of Social Science*, London, Routledge, 2018, pp. 115-19.

⁴ R. Subekti, *Pokok-Pokok Hukum Perdata*, Jakarta, PT Intermesa, 1995, pp. 11-13, Abdulkadir Muhammad, *Hukum Perdata Indonesia*, Bandung, Citra Aditya Bakti, 2010, p.229, R. Subekti, *Hukum Perjanjian*, Jakarta, PT Intermesa, 2010, pp.1-4. It is further explained that civil law relationship was born based on an agreement where between two people or two parties bound each other, the thing that binds between the two parties is a legal event that can be in the form of acts, events, and in the form of conditions, and the legal event creates a legal relationship.⁶ where one the party has the right to demand something from the other party, and the other party is obliged to fulfil the demand. Legal events in business relationships are generally carried out based on agreements. See also Handika Rahmawan, Fadillah Sabri, and Yussy Adelina Mannas, Regulating Legal Relationships of Doctors and Hospitals to One Party with Patients to Other Parties in the Indonesian Civil Law System, *International Journal of Multicultural and Multireligious Understanding* 6(4), 2019, pp. 255-272; Mochammad Istiadjid Eddy Santoso, and Prija Djatmika, Bambang Sugiri Suhariningsih, The Regulation of Medical Malpractice in Indonesia Law System and Its Legal Implication, *Regulation* 7(4), 2017, pp. 89-94; Syafruddin, The Protection for Private Rights of Hospital Patient in the Perspective of Indonesia Legal System. *Journal of Law, Policy & Globalization* 66(1), 2017, p.116.

⁵ Fred Ameln, *Kapita Selekta Hukum Kedokteran*, Jakarta, Grafikatama Jaya, 1991, pp.15-16. Furthermore, it is emphasized that the legal relationship between doctors and patients starts with the pattern of paternalistic vertical relationships such as between father and child which departs from the principle of “*father knows best*” which gives birth to relationships that are paternalistic. A legal relationship arises when a patient contacts a doctor because he feels something he feels is endangering his health. His psychobiological state gave a warning that he felt sick, and in this case the doctor was considered capable of helping him and providing assistance. Thus, the position of the doctor is considered higher by the patient and his role is more important than the patient. See also Paul W. Sherman, and Bryan D. Neff, Father knows best. *Nature* 425.6954, 2003, pp.136-137; Daniel C. Zinman, Father knows best: The unwed father's right to raise his infant surrendered for adoption. *Fordham L. Rev.* 60, 1991, p. 971; Elizabeth Kath, Father knows

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between the doctor and the patient applies the engagement law as regulated in book III of the Indonesian Civil Code (hereinafter Civil Code). To commit themselves to a medical agreement between a doctor and a patient, based on the Civil Code it must fulfill the conditions stipulated by Article 1320 of the Civil Code regarding the validity of the agreements required, namely their binding agreement, their ability to make an agreement, a certain thing, halal causes.

Regarding the first condition, which is an agreement between the parties, it means that in a doctor and patient relationship, there is an agreement where the patient comes to the doctor complaining about his illness and hopes that the doctor can treat the disease. The second requirement is their ability to make an agreement, meaning that the doctor and patient must be in a healthy state of mind and must be mature, for patients who are not yet mature can be represented by their parents. With regard to what was promised in the third condition, namely a certain thing, the meaning in the relationship between the patient and the doctor the thing that was promised could be related to the goal to be achieved by the patient, namely recovery from his illness. As for the fourth condition which is related to halal causes.

At the time of implementing health services, medical personnel namely doctors and nurses do not rule out the possibility of making a mistake or negligence. Errors or negligence by doctors in carrying out their professional duties can be fatal both to the body and soul of the patient. This mistake or negligence is called malpractice which is doing something that should not be done by health workers, not doing what should be done or neglecting obligations (negligence), violating a provision according to or based on statutory regulations.⁶

best? Cuba's proactive approach to healthcare delivers results but paternalism brings some compromises. *Cuba in Transition* 16, 2006, pp. 351-365. For more comprehensive comparison concerning to relationship between doctor and patient, please also see Hassan Chamsi-Pasha, and Mohammed A. Albar, Doctor-patient relationship: Islamic perspective, *Saudi Medical Journal* 37(2), 2016, p. 121; Bevinahalli N. Raveesh., Ragavendra B. Nayak, and Shivakumar F. Kumbar. Preventing medico-legal issues in clinical practice. *Annals of Indian Academy of Neurology* 19(Suppl 1), p.15; P. Rohan, et al. Is the Current Consent Process Appropriate for Patients and Fair to Newly Qualified Doctors?. *Irish Medical Journal* 112(6), 2019, pp. 959-959; A. Pastorini, et al. Medico-legal aspects of tort law patient safeguards within the Gelli-Bianco piece of legislation. *La Clinica Terapeutica* 169(4), 2018, pp. 170-177; Lindy Willmott, et al. Is there a role for law in medical practice when withholding and withdrawing life-sustaining medical treatment? Empirical findings on attitudes of doctors. *Journal of Law and Medicine* Vol. 24, 2016, pp. 342-355.

⁶ J. Guwandi, *Dugaan Malpraktek Medik dan Draft RPP: Perjanjian Terapeutik Antara Dokter dan Pasien*, Jakarta, Balai Penerbit Fakultas Kedokteran Universitas Indonesia, 2006, pp. 45-57.

According to Munir Fuady malpractice has the understanding that every medical action taken by a doctor or the people under his supervision, or health service providers committed to his patients, both in terms of diagnosis, therapeutic and disease management carried out in violation of the law, appropriateness, decency and principles - professional principles are carried out intentionally or because of carelessness which causes wrong acts of pain, injury, disability, bodily damage, death and other losses that cause doctors or nurses to be held accountable either administratively, civil or criminal.⁷ In the same context, Koeswadji also emphasized that medical malpractice is a form of professional negligence that patients can be asked for compensation in the event of injury or disability resulting directly from the doctor in carrying out measurable professional actions.⁸ While, Kartono Mohammad said that malpractice is a legal term, a term that is often equated with negligence in the actions of doctors (*medical negligence*).⁹

⁷ Munir Fuady, *Sumpah Hippocrates: (Aspek Hukum Malpraktek Dokter)*. Jakarta, Citra Aditya Bakti, 2005, pp. 35-46. Hippocratic oaths are oaths traditionally carried out by doctors about the ethics that they must carry out in carrying out the practice of their profession. Most people assume that this oath was written by Hippocrates himself 400 years before Christ or by one of his students. One researcher, Ludwig Edelstein, put forward another opinion that the oath was written by Pythagoras. But this theory is still doubtful because of the lack of evidence to support it. Meanwhile, the Indonesian Doctor Oath is an oath read by someone who will undergo the official Indonesian doctor profession. The Indonesian Doctor Oath is based on the Geneva Declaration (1948), which contained the Hippocratic Oath. The Indonesian Doctor's Oath Pledge was first used in 1960 and given a legal position under Government Regulation No.26 of 1960. Oaths were improved in 1983 and 1997. See also Erich Masinambow, Kedudukan Doktrin Res Ipsa Loquitur dalam Hukum Pembuktian Perdata dalam Kasus Malpraktik. *Lex et Societatis* 4(5), 2016, p 34; I. Gusti Ayu Apsari Hadi, Perbuatan Melawan Hukum dalam Pertanggungjawaban Dokter terhadap Tindakan Malpraktik Medis. *Jurnal Yuridis* 5(1), 2018, pp. 98-133; Marjan Miharja, Sanksi Administratif Malpraktik Bagi Dokter dan Rumah Sakit di Indonesia. *DE LEGA LATA: Jurnal Ilmu Hukum* 5(1), 2020, pp.51-56. For more comprehensive picture concerning Hippocratic oaths, please also see Anita Sikand Bakshi, *Hippocratic Oath or Hypocrisy?: Doctors at the Crossroads*, London, Sage Publications Pvt. Limited, 2018, pp. 67-76; Ganesh S. Dharmshaktu, and Tanuja Pangtey, Doctor! Thou shall abide by amended Hippocratic oath. *Journal of Family Medicine and Primary Care* 8(10), 2019, pp. 3450-3451; Vishal Indla and M. S. Radhika. Hippocratic oath: Losing relevance in today's world?. *Indian Journal of Psychiatry* 61(Suppl 4), 2019, p.773; Ben Green, Use of the Hippocratic or other professional oaths in UK medical schools in 2017: practice, perception of benefit and principlism. *BMC Research Notes* 10(1), 2017, p. 777; Rakesh Bhargava, Changing Ethics and the Hippocrates Oath. *Orthop Res Trau-matol Open J* 2(2), 2017, pp.1-5; I. N. Abbasi, Ethics of Doctors' Strikes. *J Community Med Health Care* 2(1), 2017, p.1008.

⁸ Hermien Hadiati Koeswadji, *Hukum Kedokteran (Studi Tentang Hubungan Hukum Dalam Mana Dokter Sebagai Salah Satu Pihak)*, Jakarta, Citra Aditya Bakti, 1998, pp. 74-77.

⁹ Kartono Muhammad, "Malpraktek", *Paper* presented at Malpractice Symposium, held by Universitas Pancasila, Jakarta 7 March 1987, p. 4. Furthermore, The term "*medical negligence*" is often used synonymously with "*medical malpractice*." Strictly speaking though, *medical negligence* is only one required legal element of a *medical malpractice* claim. *Medical negligence* recognized as an act or omission (failure to act) by a medical professional that

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One of the health services actions that harms the patient's rights is the case that occurred between Mr. Gunawan and the Cipto Mangunkusumo Hospital (hereinafter referred to as RSCM). Mr. Gunawan is the father of a patient named Nina Dwijayanti (22 years) who is a patient at the RSCM. Mr. Gunawan filed a lawsuit for alleged malpractice committed by the Defendant (RSCM) on the grounds that there was no prior consent (informed consent) to carry out surgery for the illness experienced by his child so as to cause harm by adding to the condition of the patient becoming permanently disabled, namely leaked pockets urinary system and have to use a catheter tool for life. Therefore, Mr. Gunawan feels obliged to file a lawsuit and demand requests for compensation both material and immaterial from the RSCM.¹⁰

deviates from the accepted medical standard of care. While medical negligence is usually the legal concept upon which these kinds of medical malpractice cases hinge (at least from a "legal fault" perspective), negligence on its own isn't enough to form a valid claim. But when the negligence is the cause of harm to a patient, there may be a good case. See also J. Guwandi, *Kelalaian Medik (Medical Negligence)*, Jakarta, Fakultas Kedokteran Universitas Indonesia, 1994, pp. 35-38.

¹⁰ Cipto Mangunkusumo Hospital (RSCM) employee, Gunawan, sued his workplace Rp.1,776 billion to the Central Jakarta District Court for alleged malpractice committed by 10 doctors to his daughter. This case began on February 15, 2009, when the plaintiff's son, Nina Dwijayanti, was taken to the emergency room at the RSCM because he experienced complaints of not being able to urinate and defecate. Initial examination of the patient by the ER doctor, that the patient was declared suffering from a severe infection due to intestinal obstruction. Then the doctor immediately asked the plaintiff for permission to provide medical treatment in the form of inserting gel medicine into the patient's rectal hole, but the media's action was unsuccessful. The same thing was done by Dr. Raya, but it also didn't work. Dr. Raya and Dr. Fajar finally made a second diagnosis on the patient, and as a result the patient was said to suffer from appendicitis. On February 16, 2009 while the plaintiff was at work being told his son underwent ultrasound and the results stated the patient's kidney and bladder were within normal limits. In the afternoon, the plaintiff was told by his colleague that the patient was undergoing surgery, hearing that the plaintiff ran straight into the patient's room. Arriving at the patient room, the plaintiff only met his wife who was confused. The plaintiff and his wife never gave consent to the defendant, and even the defendant never explained and asked for approval. The results of this surgery actually the patient suffered permanent disability so that the plaintiff did not want to sign a consent letter. For the plaintiff's actions, the doctors were angry and expelled the patient to get out of the RSCM in a condition that was still sick. See all this news case Samule Febrianto, "Gunawan Gugat RSCM Rp 1,7 Miliar atas Dugaan Malpraktik", *Tribun News* 18 August 2011, <https://www.tribunnews.com/nasional/2011/08/18/gunawan-gugat-rscm-rp-17-miliar-atas-dugaan-malpraktik>; Hertanto Soebijoto, "Hari Ini Sidang Pembelaan RSCM Atas Tudingan Malpraktik", *KOMPAS*, 13 September 2011, <https://megapolitan.kompas.com/read/2011/09/13/10055650/Hari.Ini.Sidang.Pembelaan.RSCM.M.Atas.Tudingan.Malpraktik>; Stefanus Yugo Hindarto, "Diduga Salah Diagnosa, Nina Dirawat 32 Bulan di RSCM", *Okezone News*, 4 October 2011, <https://megapolitan.okezone.com/read/2011/10/04/338/510609/diduga-salah-diagnosa-nina-dirawat-32-bulan-di-rscm>; Eko Piliawito, "RSCM Dituding Malpraktik oleh Karwayannya", *VIVA News*, 13 March 2009, <https://www.viva.co.id/berita/metro/40476-rscm-dituding-malpraktik-oleh-karyawannya>.

Violation of the patient's rights, then the patient can submit his complaint to the Hospital as mentioned in Article 1367 of the Civil Code, a person is not only responsible for the loss caused by his own actions, but also for losses caused by the actions of the people who are his dependents or caused by goods which are under his supervision. In addition, patients also get legal protection as consumers in accordance with Law No. 8 of 1999 concerning Consumer Protection and Law No. 36 of 2009 concerning Health.¹¹

Based on the brief description, the Author is interested in further discussing about the form of legal protection for patients as consumers of medical service beneficiaries in terms of Act No. 8 of 1999 concerning Consumer Protection and Act No. 36 of 2009 concerning Health and the form of responsibility of hospitals and doctors as medical service parties according to Law No. 8 of 1999 concerning Consumer Protection and Law No.36 of 2009 concerning Health.

Method

Data collection uses normative juridical approach, namely by studying or analyzing secondary data in the form of secondary legal materials by understanding the law as a set of positive rules or norms in applicable legislation, so this study is understood as library research, namely research on secondary materials. The specification of this research is analytical descriptive, which is describing the applicable laws and regulations associated with legal theories, this research is including library research, that is to say done by examining secondary data, namely data obtained from official documents, books relating to the object of research, research results and legislation.¹² Furthermore, the collected data are analyzed and set forth in a logical and systematic description, which is then analyzed to obtain

¹¹ For another comparison, please also *see* Mojgan, Eesa Mohammadi Khademi, and Zohreh Vanaki. On the violation of hospitalized patients' rights: A qualitative study." *Nursing ethics* 26(2), 2019, pp. 576-586; Ana Flávia Ferreira de Almeida Santana, Maria Odete Pereira, and Marília Alves. The (un) preparation of the judiciary hospital for resocialization: violation of human rights. *Escola Anna Nery* 21(3), 2017, p. 314; Anna Augustynowicz, et al. The scope of obligatory civil liability insurance of entities conducting medical activities and liability for damages resulting from violations of patients' rights in the Polish law. *Journal of Education, Health and Sport* 8(4), 2018, pp. 357-366; Mohammad Mohammadi, et al. Do patients know that physicians should be confidential? study on patients' awareness of privacy and confidentiality. *Journal of Medical Ethics and History of Medicine* Vol 11, 2018, p. 117.

¹² Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, 2014, pp. 24-28.

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clarity of the problem then deductively drawn conclusions, from general to specific matters.

Consumer Protection on Health Care Services (Case of Gunawan v RSCM Hospital)

When trading goods and/or services, the business actor is obliged to provide guarantees for the condition of the goods and/or services that are traded so that when consumers obtain the goods and/or services the consumer does not feel disadvantaged. However, in the case of Decision Number 287/PDT.G/BTH/2011/PN.JKT.PST, it was seen that there were losses experienced by consumers, namely Nina Dwijayanti as a Patient in RSCM, who experienced medical malpractice due to negligence carried out by the Team of Doctors who work at the RSCM which results in consumers being disabled all their lives.

According to Soerjono Soekanto, the scope of medical malpractice is any attitude that causes responsibility, which attitude is based on the scope of health care professionals, or what is meant by medical malpractice is the negligence of a doctor to use the level of intelligence and knowledge in treating and treating patients, which is prevalent used for patients or people who are injured according to size in the same environment.¹³

This is certainly very detrimental to consumers as users of health services. However, when the consumer represented by his parents tried to convey his complaint to the RSCM, Mr. Gunawan did not get a satisfying answer. For this reason, it can be seen, that the rights of consumers as beneficiaries of health services have been violated by RSCM. According to Article 4 of Law Number 8 of 1999 concerning Consumer Protection, there are 9 (nine) consumer rights, while if related to the case of Decision Number 287/PDT.G/BTH/2011/PN.JKT.PST, there is a right consumer rights of Nina Dwijayanti that were violated by RSCM business actors, namely:

- a. The right to comfort, security and safety in consuming goods and /or services. Consumers are entitled for the security and safety of consuming goods and / or services in obtaining health services in accordance with standard operating procedures that do not endanger or harm the patient during the treatment period. In this case, the patient suffers a loss due to

¹³ Soerjono Soekanto, 1989, *Aspek Hukum Kesehatan (Suatu Kumpulan Catatan)*, Jakarta, Ind-Hill-Corp., pp. 150-153.

the actions taken by the doctor in the form of damage to an important part of the body, namely leaky bladder which causes the patient to become disabled for life because he can no longer urinate and defecate normally because he must always use a catheter tube all his life This happened because of the surgery carried out by the Defendant's Doctors Team without the consent of the Plaintiff (informed consent).

- b. The right to true, clear and honest information about the conditions and guarantees of goods and /or services. Consumers have the right to get true, clear and honest information about the service they choose. The information provided must be described correctly, clearly, and honestly so that consumers avoid losses arising from the chosen service. Correct information is related to raw materials and supplementary materials of goods, information that clearly means that information must be delivered in Indonesian language and may not cause 2 (two) meanings, while honest information is related to the subjectivity attitude of the business actor. In the above case it appears that the Plaintiff did not get his rights because the Plaintiff did not get complete and honest information about the condition of the Patient who needed surgery suddenly,
- c. The right to be heard opinions and complaints on goods and / or services used. The right to be heard is the right so that consumers are not harmed further. If you do not get information about the side effects of treatment actions carried out by health workers, and even more so if the product causes harm to consumers. In this case, the Plaintiff has submitted its complaint for the loss suffered as a result of the surgery performed by the Defendant's Doctor's Team. The surgery carried out on the Plaintiff's child did not get approval from the Plaintiff and due to the surgery the patient's condition is now getting worse and lifelong disability.
- d. The right to obtain advocacy, protection and efforts to resolve consumer protection disputes appropriately. The right to obtain this protection is intended if consumers feel disadvantaged by business actors, then consumers can complain to the Non-Governmental Consumer Protection Institute (LPKSM), the Indonesian Consumers Foundation (YLKI), as well as institutions in other consumer protection laws and will then be accompanied to against or mediated in order to reach an agreement between consumers and business actors. In this case the Plaintiff received help to resolve the issue by the Chairperson of the Ombudsman Commission of the Republic of Indonesia (ORI), Chair of the Indonesian Medical Disciplinary Honorary Council (MKDKI), by sending a letter of

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reprimand to the Defendant even though he did not get a reply from the Defendant.

- e. The right to be treated or served properly and honestly and not discriminatory. The right to be treated or served properly and honestly and not discriminatory based on ethnicity, religion, culture, region, education, rich, poor, and other social status. In this case, the Plaintiff clearly received unfair and discriminatory treatment carried out by the Defendant, for example, the Defendant's uncaring attitude to the condition of the patient who was unable to use his urinary tool normally as humans normally do, the Defendant with his means of evicting the Patient and the Plaintiff discharged from the hospital and may not return again even though the patient is still in a state of illness, and the Plaintiff received harsh treatment by getting inappropriate words from the Defendant who lowered the Plaintiff's dignity and dignity,
- f. The right to receive compensation, compensation and / or compensation, if the goods and / or services received do not comply with the agreement or are not as intended. The right to compensation is intended to restore the situation that has happened which caused the patient to become disabled for life that urinals. Patients up to now and forever (according to the Defendant's doctors) must use a catheter and cannot return to normal as before, it is caused by negligence, carelessness Team Doctor. This right is closely related to the use of services that have harmed consumers both in the form of material losses, as well as losses relating to the consumer (sickness, disability, even death) of consumers. To realize this right must go through certain procedures, both through the court and outside the court.

Related to the existence of consumer rights that are violated by business actors, it is seen that business actors do not carry out their obligations as stipulated in Article 7 of Law Number 8 of 1999 concerning Consumer Protection, if related to the case of Decision Number 287/PDT.G/BTH/2011/PN.JKT.PST, then the RSCM does not carry out its obligations as it should. These obligations include:

- a. *Having good faith in carrying out its business activities.* Business actors must have good faith in conducting business activities, this must be done to prevent losses to consumers that would cause disputes between the two. In the above case it can be seen that the Defendant did not carry out his obligation to have good intentions in carrying out treatment activities

for the Patient, due to the loss experienced by the Patient in the form of the patient's condition which got worse after the surgical action carried out by the team of the defendant's doctors and the patient became disabled for life. between business people and consumers has now become a dispute between the two.

- b. *Provide true, clear and honest information about the conditions and guarantees of goods and / or services and provide an explanation of the use, repair and maintenance.* Business operators must provide true, clear and honest information about the services they choose. The information provided must be described correctly, clearly, and honestly so that consumers avoid losses arising from the chosen service. Correct information is related to raw materials and supplementary materials of goods, information that clearly means that information must be delivered in Indonesian language and may not cause 2 (two) meanings, while honest information is related to the subjectivity attitude of the business actor. Related to the above case, the Defendant did not carry out his obligations as he should,
- c. *Treat or serve consumers properly and honestly and not discriminatory.* Business actors must treat or serve consumers properly and honestly and not discriminatory and business actors are prohibited from discriminating consumers in providing quality service to consumers. But in this case, the Defendant clearly treated consumers and the Plaintiff unfairly and discriminatively, for example with an attitude of indifference of the Defendant to the condition of the patient who was unable to use his urinary tool normally as humans normally do, the Defendant with his stand to expel the Patient and Plaintiff so that discharged from the hospital and may not return again even though the patient's condition is still sick,
- d. *Guarantee the quality of goods and / or services produced and / or traded based on the provisions of the applicable goods and / or service quality standards.* Business operators must guarantee the quality of services provided to consumers in accordance with applicable health service quality standards. In the above case, the Defendant could not guarantee the quality of services provided in this case the health services performed by doctors under his responsibility. The health services provided by the Defendant's Doctor Team are not in accordance with the professional standards of health services in accordance with procedures in accordance with statutory regulations,

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e. *Providing compensation, compensation and or compensation for losses resulting from the use, use and utilization of traded goods and / or services Business actors are required to provide compensation if the services received by consumers are not as promised.* In the above case, the Defendant should provide compensation for the loss suffered by the Plaintiff during the healing process carried out by the patient at the Defendant's place, this is due to the insignificant costs incurred by the Plaintiff, but instead of recovering the patient's condition, the condition worsened and even caused Lifelong disability for patients.

In Law Number 36 of 2009 regarding Health, there are articles relating to the case above which provide protection to the rights of consumers, although not much but sufficient to protect consumers in using health services, namely:

According to Article 53 of Law No. 36 of 2009 concerning Health, it is said that individual health services are intended to cure illnesses and restore the health of individuals and families. However, if in healing there is a mistake or negligent act that causes harm, then the party who feels aggrieved in this case the patient as a consumer of health service users has the right to claim compensation as regulated in Article 58 of Law No. 36 of 2009 concerning Health, that everyone has the right to claim compensation for a person, health worker, and / or health provider who causes loss due to errors or negligence in the health services he receives. The form of compensation in the form of; money refund; replacement of goods and / or services of similar type or equivalent value;

The compensation must be made within 7 (seven) days from the date of the transaction. The granting of compensation also does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error. In this article it can be seen that consumers are entitled to compensation if there is negligence / error during the treatment process for patients performed by health workers / doctors. If related to the case that has been explained, the RSCM business actors are indeed obliged to be responsible for negligence / mistakes committed by the Defendant Doctor Team experienced by Nina Dwijayanti as consumers of health service users who use health services from RSCM.

Apart from a few brief descriptions above regarding legal protection of patients as beneficiaries of medical services there are provisions regarding protectionthe law in the civil field adheres to the principle that anyone who

harms others must provide compensation. As stipulated in Article 1365 Civil Code every act against the law, which brings harm to another person, obliges the person who because of his mistake issued the loss. So if there is someone who feels aggrieved due to the actions of another party, of course he will sue the other party to be legally responsible for his actions.

In the protection of patients as consumers of health service beneficiaries who have been harmed by doctors or the hospital, and these actions cause a significant amount of loss or from these actions cause lifelong disability or even death, in this case the business actor resulting in the loss happened obliged to give compensation. From the form of compensation is intended to improve the situation, and most of the compensation for a large amount of money for the costs incurred during treatment.

Responsibilities of Health Service Providers according to the Health Act

The regulation of the responsibility of business actors to consumers is regulated in Article 19 of Law Number 8 of 1999 concerning Consumer Protection jo. Article 23 of Law Number 8 of 1999 concerning Consumer Protection jo. Article 28 of Law Number 8 of 1999 concerning Consumer Protection. Article 19 of Law Number 8 of 1999 concerning Consumer Protection regulates the responsibilities of business actors in general, Article 23 of Law Number 8 of 1999 concerning Consumer Protection regulates if business actors refuse and / or do not respond and / or not meet compensation for consumer demands, then business actors can be sued through BPSK or by filing a lawsuit to the judiciary in the consumer's place of residence.

According to Inosentius Samsul, the principle of responsibility based on error, there are 2 (two) modifications, namely the first principle of responsibility based on the presumption of guilt and/or negligence or the business actor is considered guilty, so that there is no need to prove his mistake (presumption of negligence) and the second is the principle responsible for the burden of proof of reversal (presumption of liability principle). This principle is also regulated in article 1365 of the Civil Code which is usually known as an article about acts against the law. This illegal act requires 4 (four) basic principles, namely the existence of an act; the

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element of error; any loss suffered; there is a causal relationship between error and loss.¹⁴

In this case, the RSCM adheres to the principle of responsibility for negligent presumption/guilt because the business actor has neglected the occurrence of surgery performed by the RSCM Physician Team which causes harm to the patient, which is to be disabled for life and also has been wrong for not asking prior approval from parents Patients at the time of surgery will be performed by the RSCM Physician Team and also the doctors who work at the RSCM have mistakenly provided a changing diagnosis to the patient. In this case the business actor is considered guilty, so there is no need to prove his mistakes.

Pursuant to Article 19 of Law Number 8 of 1999 concerning Consumer Protection regulates the responsibilities of business actors, namely:

1. Business actors are responsible for providing compensation for damage, pollution and / or loss of consumers due to consuming traded goods and / or services;
2. Compensation as referred to in paragraph (1) can be in the form of refunds or replacement of goods and / or services of a similar or equivalent value, or health care and / or compensation in accordance with the provisions of the applicable laws and regulations;
3. The compensation is given within 7 days after the transaction date;
4. Giving compensation as referred to in paragraph (1) and paragraph (2) does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error;
5. The provisions referred to in paragraph (1) and paragraph (2) do not apply if the business actor can prove the error is the fault of the consumer.

Provisions of Article 19 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection above if related to the case of Decision No.287/PDT.G/BT/2011/PN.JKT.PST, the business actor, namely RSCM must be responsible for the losses suffered by Nina Dwijayanti as consumers

¹⁴ Shidarta, *Hukum Perlindungan Konsumen Indonesia*, Jakarta, Grasindo, 2000, pp. 59-60. See also Inosentius Samsul, Penegakan Hukum Perlindungan Konsumen Melalui Penyelenggaraan Metrologi Legal dalam Era Otonomi Daerah. *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 6(2), 2016, pp. 169-186; Inosentius Samsul, Aspek Nilai dan Kepentingan dalam pembentukan Undang-undang (Suatu Tinjauan Sosiologis). *Era Hukum-Jurnal Ilmiah Ilmu Hukum* 3(4), 2019, pp. 58-60.

of health service users in the Cipto Mangunkusumo Hospital, due to negligence and inadvertent conduct of business actors when carrying out surgical actions against consumers.

In Article 19 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection, that compensation as referred to in paragraph (1) does not have to always be in the form of refunds, but the Defendant can compensate the Plaintiff for damages by replacing similar goods and / or services or equivalent value, or health care and /or provision of compensation in accordance with the provisions of the legislation in force.

The responsibility of the RSCM is not only related to Article 19 of Law Number 8 of 1999 concerning Consumer Protection, but according to Article 53 of Law No. 36 of 2009 concerning Health, it is said that individual health services are intended to cure illnesses and restore individual health and family. However, if in healing there is a mistake or negligent act that causes harm, then the party who feels disadvantaged in this case the patient as a consumer of health service users has the right to claim compensation as regulated in Article 58 of Law Number 36 of 2009 concerning Health, that everyone has the right demanding compensation for someone, health worker, and / or health providers that cause losses due to errors or negligence in the health services they receive. The form of compensation in the form of:

1. Money refund;
2. Replacement of goods and / or services of similar type or equivalent value;
3. Health care and / or provision of benefits in accordance with the provisions of the applicable legislation.¹⁵

The compensation must be made within 7 (seven) days from the date of the transaction. The granting of compensation also does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error.¹⁶

In the Central Jakarta District Court Decision No.287 / PDT.G / BTH / 2011 / PN.JKT.PST, it is said that Nina Dwijayanti (22 years), hereinafter referred to as Patient, initially came to RSCM only with complaints of not being able to urinate. and defecation with the main complaint of not being

¹⁵ Sudaryatmo, *Seri Panduan Konsumen, Memahami Hak Anda Sebagai Konsumen: Penjelasan Praktis mengenai UU No: 8/1999 tentang Perlindungan Konsumen*, Jakarta, PIRAC & PEG., 2001, p.78

¹⁶ *Ibid.*, p. 79

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able to defecate since 2 days before being admitted to the hospital with a history of vomiting, blackish brown. At first the patient was only given an action in the form of inserting gel into the rectum conducted by Dr. Selly, dr. Nadia and Dr. Raya repeatedly put gel into the patient's rectum but did not give any results, the patient's condition was getting worse because the patient continued to whimper in pain due to the medical actions given by the doctors.

It did not stop there, suddenly without prior notice and even without the approval (informed consent) of the Plaintiff's team of doctors at the Defendant's place namely Dr. Raya Hendri Batubara and dr. Yevri (as an Operator); Dr. Hendrik Siahaan and Dr. Danny (as Assistant); Dr. Yarman Nazni, Sp.BD and Dr. A try Rodjani, Sp.U (Consulent); dr. Alex (Anesthesia) performs medical surgery on patients. This is very unfortunate by the Plaintiff as the parent of the Patient, because after the surgical medical treatment the patient's condition is actually getting worse, namely the urinary device. when, it was caused by negligence,

What is meant by doctor's legal liability here is accountability, which is a doctor's "attachment" to the legal provisions in carrying out his profession. The responsibility of a doctor in the field of law, can occur in the field of civil and criminal law. The doctor is considered responsible in the field of civil law if the doctor does not carry out his obligations (breaking promises / defaults), ie not giving his achievements as agreed upon can also occur due to acts against the law.

With this incident, it is not wrong if the Plaintiff demands compensation to the Defendant, because the doctor who handles the Patient is. dr. Raya and Dr. Yevri (Operator); dr.Hendrik and Dr. Dhanny (Assistant); dr. Yarman Sp.BD and Dr. Arry Rodjani Sp.U (Consulent); Dr. Alex (Anesthesia) is the Defendant Physician Team who works or is under the Defendant's responsibility in conducting medical treatment to the Patient. Has performed surgery to the patient without the consent and the consequences are very detrimental. This is according to what has been regulated in Article 1367 of the Civil Code which reads that a person is not only responsible for the loss caused by one's own actions but also for the loss caused by the actions of the people who are his dependents, or caused by goods under their supervision. According to Article 46 of Law No.44 of 2009 concerning Hospitals that hospitals are legally responsible for all losses incurred due to negligence committed by health workers in the Hospital.

With the existence of these regulations, it is clear that it is not wrong if in the Plaintiff's case sue the Defendant as a business actor (RSCM) because

it is the party responsible for the Doctor's Team that handles Patients as consumers of health service users (Nina Dwijayanti) which causes losses, namely the condition of consumers it is even worse that the consumer urinary device until now and forever (according to the Defendant's doctors) must use a catheter and cannot return to normal as usual, it is caused by negligence, inadvertence of the Doctors Team at the Defendant's place.

The amount of compensation for patients as consumers of health service users according to several existing laws and regulations, among others, are set as follows:

1. Every doctor or dentist who deliberately practices medicine without having a registration certificate, is sentenced to a maximum imprisonment of 3 (three) years or a maximum fine of Rp 100,000,000.00 (one hundred million rupiah) (Article 75 of Law 29 2004 Medical Practice)
2. Any person who intentionally uses an identity in the form of a degree or other form that gives an impression to the community as if the person concerned is a doctor or dentist who has a doctor registration certificate or dentist registration certificate or license for practice, convicted with the most imprisonment 5 (five) years or a maximum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiah) (Article 77 of Law 29 2004 Medical Practice)
3. Convicted with a maximum imprisonment of 1 (one) year or a maximum fine of Rp 50,000,000.00 (fifty million rupiah) if the doctor or dentist intentionally fails to fulfill the obligations referred to in Article 51, namely the doctor or dentist in carrying out the practice of medicine has obligations:
 - Providing medical services in accordance with professional standards and standard operating procedures and patient medical needs
 - Refer the patient to a doctor or another dentist who has better expertise or ability, if he is unable to carry out an examination or treatment
 - Keep everything he knows about the patient a secret, even after the patient's death
 - Conduct emergency relief on the basis of humanity, except if he believes there are other people on duty and able to do it

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4. Any person who intentionally employs a doctor or dentist who does not have a practice license to practice medicine at the health service facility is liable to a maximum imprisonment of 10 (ten) years or a maximum fine of IDR 300,000,000.00 (three hundred million rupiahs)).

So it is not wrong if the business actor, namely RSCM as Defendant must be responsible for the cost of returning the money that the Plaintiff has issued monthly since February 2009 because they have to be treated until the verdict is dropped, the consumer is still being treated at Rp. 71,010,000.00, and the cost of therapy and medicine for children in the amount of Rp. 105,000,000.00 (one hundred and five million rupiah), plus the cost of life insurance for lifelong consumer care in the hope of overseas treatment of Rp. 600,000,000.00 (six hundred million rupiah) with a total of Rp. 776,010,000.00 (seven hundred seventy-six million ten thousand rupiah). In addition, the Defendant can also provide compensation to the Plaintiff by providing compensation due to damage to an important part of the consumer's body, namely the leakage of the bladder caused by surgery performed by a business actor without the consent of the Plaintiff as the parent of the consumer, so it is natural that the Plaintiff demands compensation immaterial loss of Rp 1,000,000,000.00 (one billion rupiah), plus an apology that must be done by a business actor because during this problem the Plaintiff's name in the eyes of his friends becomes bad so it is only natural that the Panel of Judges asks the business actor to apologize to The plaintiff is officially written, also through 5 (five) print medias, namely: KOMPAS, TEMPO, Suara Pembaharuan and The Jakarta Post, and 8 (eight) electronic media namely SCTV, TRANS TV, RCTI, INDOSIAR, METRO TV, TVRI, TRANS7, ANTV must be carried out for 7 (seven) consecutive days as the Plaintiff's claim was granted by the Central Jakarta District Court Judge Council.

Conclusion

This research concluded and highlighted that the form of consumer protection provided by business actors/defendants (RSCM) to patients (Nina Dwijayanti) as consumers of medical services represented by their parents (Mr. Gunawan) as Plaintiffs related to negligence of medical services carried out by business actors that occurred on 16 February 2009

according to Law Number 8 of 1999 concerning Consumer Protection, namely the right to comfort, security, and safety in consuming goods and / or services (Article 4 point a), in the case of consumers receiving health services not in accordance with standard operating procedures so as to result in consumers become disabled for life; the right to correct, clear and honest information about the conditions and guarantees of goods and / or services (Article 4 point c), in the case of consumers and their families not getting complete and honest information about the condition of consumers and there is no notification about the reason for the surgery; the right to hear his opinion and complaints on the goods and / or services used (Article 4 point d), in the case of consumers who have submitted their complaints for losses suffered due to surgical actions carried out by business actors but do not get any response; the right to obtain advocacy, protection and efforts to resolve consumer protection disputes appropriately (Article 4 point e), in the case of consumers receiving assistance to resolve problems by the Chairperson of the Ombudsman Commission of the Republic of Indonesia (ORI), Chair of the Indonesian Medical Disciplinary Honorary Council (MKDKI), by sending a reprimand letter to the business actor even though he did not get a reply from the business actor; the right to be treated or served properly and honestly and not discriminatory (Article 4 point g), in the case of consumers getting unfair and discriminatory treatment, for example, business actors do not care about the patient's condition which is getting worse, and by pushing away consumers to get out from the hospital and may not return even though the condition of the consumer is still sick, besides that the consumer's parents also get rough treatment by getting inappropriate words from business actors who lower the dignity of the consumer; the right to receive compensation, compensation and / or compensation, if the goods and / or services received are not in accordance with the agreement or not as intended (Article 4 point h), the consumer (Nina Dwijayanti) should receive compensation from the business actor (RSCM) in the form of refunds for costs incurred during treatment, replacement of goods and / or services of similar or equivalent value, health care and / or provision of benefits in accordance with applicable laws and regulations by providing health care until the consumer recovers as before.

Whereas according to Law Number 36 of 2009 concerning Health, every person has the right to obtain safe, quality and affordable health services (Article 5 paragraph 2), in this case the consumer receives a surgical procedure which is basically a high risk but is carried out by a part

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of the Defendant Physician Team who is a practicing doctor who is still in education (resident); every person has the right to obtain information about his health data including the actions and treatments he has received or will receive from health workers (Article 8), in this case, the consumer and the Plaintiff do not get clear information about the actual condition of the patient so suddenly surgery is also performed without the consent of the Plaintiff as the patient's parents; everyone has the right to accept or reject some or all of the relief measures that will be given to him after receiving and understanding information about such actions in full (Article 56 paragraph 1), The Plaintiff as the parent of the Patient did not provide answers or approval to accept or even refuse the surgery performed by the Defendant's Doctor's Team, because from the beginning the Plaintiff did not get complete information about the surgery; everyone has the right to claim compensation for a person, health worker, and / or health provider who causes loss due to errors or negligence in the health service he receives (Article 58 paragraph 1 in conjunction with Article 60), consumers (Nina Dwijayanti) should receive compensation from the perpetrators business (RSCM) in the form of compensation of IDR 300,000,000,

This compensation is in accordance with Article 19 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection, which states that compensation as referred to in paragraph (1) may be in the form of refunds or replacement of goods and / or services of similar or equivalent value, or health care and / or provision of compensation in accordance with the provisions of the applicable laws and regulations. But upon the Plaintiff's claim for immaterial compensation of Rp 1,000,000,000.00 (one billion rupiah), as a result of damage to an important part of the consumer's body that is the leakage of the bladder caused by surgery performed by a business actor without the consent of the Plaintiff as the parent of the consumer does not have a fixed calculation basis and for the non-material compensation value demanded by the Plaintiff due to Law Number 8 of 1999 concerning Consumer Protection only recognizes material compensation only. But in Article 46 of Law No.44 of 2009 concerning Hospitals that hospitals are legally responsible for all losses incurred due to negligence committed by health workers in the Hospital.

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Quote

Disease, sickness, and old age touch every family. Tragedy doesn't ask who you voted for. Health care is a basic human right.

Massachusetts Senator Elizabeth Warren