

# Legal Protection of The Patient in The Event of Occurrence the Misdiagnosis Is Connected with Law Number 8 Of 1999 Consumer Protection and Law Number 29 of 2004 Concerning the Practice of Medicine (Case Study of High Court Decision DKI Jakarta Number: 624/Pdt/2019/ PT. DKI)

Ninithiya Dwi FEBRIYANTI<sup>1</sup>

<sup>1</sup>Law Study Program, Bandung College of Law, Indonesia

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## Corresponding Author:

Ninithiya Dwi Febriyanti

## E-mail:

[vonywijaya@gmail.com](mailto:vonywijaya@gmail.com)

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## Abstract:

### Purpose:

A patient is someone who needs health services or medical services in a hospital. In medical services, it does not rule out the possibility of an error or negligence. Mistakes or negligence made by health workers in carrying out their duties and profession can have fatal consequences, both on the body and soul of the patient, in this case, of course, it is very detrimental to the patient. Therefore, legal protection is needed for patients and accountability of health workers for losses suffered by patients.

### Methodology:

The data collection techniques in the form of document studies. The data obtained is then processed and compiled systematically, then analyzed qualitatively.

### Findings:

The author has the purpose of this study, first to know and examine the legal protection of patients in Law Number 8 of 1999 concerning Consumer Protection and Law Number 29 of 2004 concerning Medical Practice, and the second author examines the legal responsibility of doctors in the event of a misdiagnosis in case number 624 / PDT / 2019 / PT. DKI.

### Implication:

Protection of patients in the event of misdiagnosis is regulated in several laws and regulations, namely in Article 1365 of the Civil Code, Law Number 8 of 1999 concerning Consumer Protection and Law Number 29 of 2004. The form of legal responsibility of doctors in the event of a misdiagnosis can be divided into ethical responsibility and legal responsibility. Legal responsibility can also be divided into administrative responsibility, criminal responsibility and civil responsibility.

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## INTRODUCTION

According to the third paragraph of Article 1 of the 1945 Constitution, which states that "The State of Indonesia is a state of law," In line with the aspirations of the Indonesian people as stated in the Preamble to the 1945 Constitution, specifically:

"Protect the entire Indonesian nation and all Indonesian bloodshed and to promote the general welfare, educate the life of the nation, and participate in implementing world order based on independence, lasting peace and social justice."

Furthermore, it was concluded that one of the objectives of the Indonesian nation is to provide protection for all Indonesian citizens themselves. One form of protection that must be provided by Indonesia to its citizens is equal protection in law in accordance with the contents of Article 27 paragraph (1) of the 1945 Constitution which reads:

"All citizens have equal standing in law and government and are obliged to uphold that law and government with no exception."

Sajipto Rahardjo argues about the presence of law in society:

"The presence of law in society among other things is to integrate and coordinate interests that can collide with each other by law is integrated in such a way that the collisions can be suppressed as little as possible. Organizing those interests. The law protects a person's interests by allocating power to him to act in the course of his interests."

The law protects a person's interests by allocating a power to him to act in the framework of his interests. This allocation of power is carried out measurably, in a sense, determined by power and depth. Such power is called a right. Thus, not every power in society can be called a right, but only a certain power, which is given by law to someone.

The author will look at legal protection for patients in the event of a doctor's misdiagnosis based on the preceding description. A thesis titled "Legal Protection for Patients in the Event of Misdiagnosis Related with Law Number 8 of 1999 Concerning Consumer Protection and Law Number 29 of 2004 Concerning Medical Practice (Case Study of DKI Jakarta High Court Decision Number 624 / PDT / 2019 / PT. DKI)" will also include a summary of the research's findings.

## METHODS

This study uses empirical legal research methodology. Empirical legal research is a legal research method that uses empirical facts taken from human behavior, both verbal behaviors obtained from interviews and actual behavior carried out through direct observation. This research was conducted by examining the actual situation in society, namely looking for facts related to the problems in research.

## RESULT AND DISCUSSION

**Misdiagnosis.** Made by Doctors Against Their Patients in Court Decisions On September 20, 2015 the Plaintiff fell from a height of more than 2 meters. As a result of the accident, the plaintiff suffered injuries to the legs and experienced swelling. After that the Plaintiff went to dr. Yunika as a general practitioner to conduct an examination, then dr. Yunika conducted an initial examination and asked the Plaintiff to do a scan ("X-ray") of the leg injury in the Radiology section. Based on the results of radiology, the Plaintiff suffered 31 fractures in the soles of his feet and then dr. Yunika put an elastic bandage on Plaintiff's leg. Upon the referral of dr. Yunika, the plaintiff went to dr. D as an Orthopedic surgeon specialist with X-ray results and X-ray certificates from dr. B, then dr. D conducted an examination of Plaintiff's leg injury.

In conducting an examination referring to the X-ray Certificate issued by dr. B stated that "there does not appear to be a fracture in the pedic bone" for the Plaintiff's leg injury, where dr. D stated that "there is no fracture in the Plaintiff's leg". Because there was no fracture in the Plaintiff's leg and only swelling, Dr. D only gave pain and swelling to the Plaintiff.

Furthermore, on September 28, 2015 the Plaintiff again went to Dr. D to check his leg injury, where dr. D in conducting the examination only pressed the part of the Plaintiff's leg that was painful. dr. D stated "nothing happened to Plaintiff's leg, Plaintiff's leg injury due to hard impact only caused leg swelling". Due to the foot injury suffered by the Plaintiff still experiencing pain and continuing to experience swelling, then on October 8, 2015 the Plaintiff again went to Dr. D for examination and asked for a second X-ray. On the results of the second X-ray, Dr. D still stated that "there were no serious injuries to the Plaintiff's leg". Because the Plaintiff's leg was getting worse, on November 19, 2015 the Plaintiff again went to Dr. D and then dr. D asked for a third X-ray.

That on January 8, 2016 the Plaintiff took the initiative to visit Budhi Asih Hospital to obtain another opinion ("second opinion") regarding the leg injury he suffered and the Plaintiff showed the first x-ray results from Defendant I dated September 20, 2015. After the doctor from Budhi Asih Hospital conducted an examination and saw the first x-ray results shown by the Plaintiff stated "there was a fracture in the Plaintiff's leg". To confirm the diagnosis results from the Budhi Asih Hospital Doctor, on January 11, 2016 the Plaintiff visited the hospital. Early Bross to check for leg injuries and ask for x-rays. At that time, the Plaintiff showed the first x-ray results of Defendant I dated September 20, 2015 to the Doctor from Awal Bross Hospital and then the Doctor stated "there was a fracture in the Plaintiff's leg bone", this was in accordance with the statement of the Doctor of Budhi Asih Hospital.

That after the x-ray results from Awal Bross Hospital have come out, the doctor from the hospital. Early Bross stated "Plaintiff's leg joints are fused". On January 30, 2016 the Plaintiff returned to the hospital. Early Bross

and asked for an x-ray and then the doctor examined the x-ray results stating "Plaintiff's leg joints are closed and fused". Based on the results of the examination, doctors from Awal Bross Hospital stated "despite surgery, the joints still cannot return to normal and can no longer walk normally".

**Consideration.** Considering, that the appeals of the original Comparators of Defendant II and Defendant III have been filed within the grace period and according to the procedure and meet the requirements prescribed by law, therefore the appeal is formally acceptable;

Considering, that after reading and paying attention to the case file along with the attached letters, a certified copy of the decision of the East Jakarta District Court dated March 16, 2017 Number 182 / Pdt.G / 2016 / PN. Jkt.Tim, the memory of the appeal and counter memory of the litigants.

## CONCLUSION

The overall description of the discussion that is described and analyzed against the identification of problems that have been formulated, the following conclusions can be drawn:

1. Legal protection for patients in the event of misdiagnosis according to the DKI Jakarta High Court Decision Number 624 / PDT / 2019 / PT. DKI is regulated in several laws and regulations, one of which is in the Civil Code. In the Civil Code, the form of protection provided by doctors is in the form of compensation to patients for losses arising from unlawful acts based on Article 1365 of the Civil Code. Furthermore, the form of legal protection for patients in the event of misdiagnosis is regulated in Article 19 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection and Article 66 paragraph (1) of Law Number 29 of 2004 concerning Medical Practice, in both laws the form of protection provided by doctors in the form of compensation due to errors or negligence in health services.
2. The legal responsibility of doctors to patients in the event of a misdiagnosis can be divided into ethical responsibility and legal responsibility. Legal responsibility can also be divided into administrative responsibility, criminal responsibility and civil responsibility. In the Decision of the DKI Jakarta High Court Number 624 / PDT / 2019 / PT. DKI, misdiagnosis made by doctors can be qualified and meet the elements of Unlawful Acts (*onrechtmatige daad*) as stipulated in Article 1365 of the Civil Code, the elements of these unlawful acts are in the form of unlawful acts, the fault of the perpetrator, the existence of losses for the victim, the causal relationship between the act and the loss. In addition to doctors, Harum Sisma Medika Hospital is also responsible for the misdiagnosis made by the two doctors as health workers at the hospital, this is regulated in Article 1367 of the Civil Code, further regulated also in Article 46 of Law Number 44 of 2009 concerning Hospitals. Doctors and hospitals are business actors in the field of health services, this is stated in Article 1 of Law Number 8 of 1999 concerning Consumer Protection. In the Decision of the DKI Jakarta High Court Number 624 / PDT / 2019 / PT. DKI, Harum Sisma Medika Hospital is responsible for providing compensation for misdiagnosis made by doctors as health workers at the hospital, this is regulated in Article 19 paragraph (1) and paragraph (2) of the Law. Furthermore, Article 66 paragraph (1) of Law Number 29 of 2004 concerning Medical Practice regulates the responsibility of doctors as providers of health services to patients.

## REFERENCES

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Law Number 44 of 2009 concerning Hospitals. Doctors and hospitals are business actors in the field of health services, this is stated in Article 1 of Law Number 8 of 1999 concerning Consumer Protection. In the Decision of the DKI Jakarta High Court Number 624 / PDT / 2019 / PT. DKI, Harum Sisma Medika Hospital is responsible for providing compensation for misdiagnosis made by doctors as health workers at the hospital, this is regulated in Article 19 paragraph (1) and paragraph (2) of the Law. Furthermore, Article 66 paragraph (1) of Law Number 29 of 2004 concerning Medical Practice regulates the responsibility of doctors as providers of health services to patients.