

Consumer Protection for Scarcity of Hospital Beds the Impact of Covid in the Perspective of the Law on Hospitals

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Abstract : Getting access to health care is every citizen's right. Particularly, during the pandemic of covid-19, all hospitals must be prepared in providing community services, hospital beds included. The study aims to reveal legal protection and conduct an in-depth analysis on consumer rights and violations of hospital obligation–business actors for hospital beds scarcity due to Covid-19. The study employed normative-juridical methods. The researchers conducted a study to analyze both laws written in books. Based on this method, the researchers have to manage a logical assessment of relevant legal provisions, the implementation of consumer protection. Specifically, this should be based on Law No. 8 of 1999 on consumer protection juncto law No. 44 of 2009 on hospitals. As a matter of fact, the study found hospital beds scarcity due to the increased number of covid-19, makes the responsible hospitals and government seem unresponsive. Even though, the citizens' rights as consumers are clearly stated in Law Number 8 of 1999 on Consumer Protection juncto Law no. 44 of 2009 on Hospitals. The follow-up actions of the authorized agency in overcoming the losses of community members are referred to the applicable laws and regulations.

Keywords: Covid 19, Hospital, Loss of Consumer Protection, Responsibility

Perlindungan Konsumen atas Kelangkaan Tempat Tidur Rumah Sakit Dampak Covid dalam Perspektif Undang-Undang tentang Rumah Sakit

Abstrak : Mendapatkan pelayanan Kesehatan merupakan hak dari setiap warga negara, oleh karenanya terlebih lagi dalam masa pandemic Covid 19 seperti ini rumah sakit harus sigap dalam penyediaan pelayanan bagi masyarakat termasuk pada tempat tidur di rumah sakit. Tujuan yaitu bagaimana perlindungan hukum dan analisa dalam terhadap hak konsumen dan pelanggaran kewajiban rumah sakit sebagai pelaku usaha atas kelangkaan tempat tidur rumah sakit dampak Covid 19. Metode penelitian yang digunakan yaitu Penulisan ini menggunakan metode penelitian yuridis normatif. Peneliti melakukan suatu penelitian yang menganalisis hukum baik yang tertulis dalam buku, Berdasarkan metode tersebut, peneliti harus melakukan pengkajian secara logis terhadap ketentuan hukum yang dapat dianggap relevan dengan pelaksanaan perlindungan konsumen khususnya dalam Perlindungan Hak Konsumen Ditinjau Dari Undang-Undang No. 8 Tahun 1999 Tentang Perlindungan Konsumen: Kelangkaan Tempat Tidur Rumah Sakit Dampak Covid 19 juncto Undang-Undang No 44 Tahun 2009 Tentang Rumah Sakit, Hasil penelitian adalah Pada fakta lapangannya, kelangkaan tempat tidur di rumah sakit akibat meningkatnya kasus covid 19 membuat rumah sakit dan pemerintah sebagai instansi yang berkewajiban menangani hal tersebut terkesan tidak sigap, hak warga disini sebagai konsumen tertera jelas dalam Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Juncto Undang-Undang No. 44 Tahun 2009 Tentang Rumah Sakit dan bagaimana tindak lanjut instansi yang berwenang tersebut mengatasi kerugian yang dialami oleh warga masyarakat mengenai hal ini berdasarkan ketentuan perundangan yang berlaku

Kata Kunci: Tanggung jawab, Rumah Sakit, Covid 19, Kerugian Perlindungan Konsumen

INTRODUCTION

Human rights are rights exist and are inherent to oneself or to human dignity as part of a human being. The right is in humans and cannot be separated from it. Human rights are owned by humans. This right is not obtained or bestowed by an authorized state or government. It belongs to a human as part of human dignity.¹ This includes the right to get health facilities. Health is a prosperous

¹ Haris Budiman, Pelanggaran Hak Asasi Manusia Dalam Kebijakan Daerah Di Bidang Tata Ruang Di Kabupaten Kuningan, Jurnal Unifikasi, ISSN 2354-5976 Vol. 04 Nomor 01 January 2017.p.23

condition of body, soul, and social that enables people to be economically productive (Ps. 1 point (1) of Law Number 23 of 1992 concerning Health). Therefore, health becomes the basic recognition of humanity degree. Without health, a person becomes conditionally unequal. Without health, a person could not obtain his other rights. Unhealthy people will automatically lose their right to life, could not get and live a decent job, could not enjoy their rights to associate, assembly, and express opinions as well as could not get an education for their future. In short, one could not fully enjoy life as a human being. At the national scope, Article 28 H paragraph (1) of the 1945 Constitution states everyone has the right to live in physical and spiritual prosperity, to have a place to live, to have a good and healthy living environment, and have the right to get health services.²

At the beginning of its spread in early 2020, the world was tremendously shaken by the severe infections with unknown causes. It started with a report from China to the WHO. 44 patients were found to be suffering from acute pneumonia in Wuhan City, Hubei Province, China at the end of 2019. The initial suspicion on the spread of Covid-19 came from a wet market selling fish, marine creatures, and other animals.³ As is known, SARS-Cov-2 is not a new type of virus. In scientific explanations, it refers to a virus that can mutate to form a new genetic structure. In other words, this is the same type of virus and only changes uniformly. The reason for giving the name SARS-Cov-2 is because the coronavirus has a close genetic relationship with the viruses causing SARS and MERS⁴

Almost all countries in the world are suffering from the pandemic of Covid-19, Indonesia for instance. Since its infiltration, the pandemic of covid-19 has been declared a national disaster stipulated in Presidential Decree No. 12 of 2020 as Non-Natural Disasters. Data showed on December 5, 2020, there was an addition of 6,027 new positive cases of Covid-19, bringing the total number of Covid-19 cases in Indonesia to 569,707 cases. Covid-19 has spread in 34 provinces and 505 districts/cities.⁵

With the current pandemic of covid-19, health services become a priority needs for today's community. The victims of covid-19 keep increasing day by day and making hospitals fully occupied, especially in red zones like DKI Jakarta. At that time, there was a hospitals beds scarcity affected by covid-19. Secretary-General of the Indonesian Hospital Association (PERSI), Lia Gardenia Partakusuma, said the occupancy or bed occupancy rates in hospitals in big cities had exceeded the standard, which was between 70-80%. As for the regions, it reaches 90%-100%. DKI Jakarta, West Java, Central Java are highly in difficulty. Numerous hospitals have 100% occupancy for the ICU and isolation rooms. There are no extra beds recently and all are fully occupied.⁶

The Indonesian BBC team News has visited one of the government's referral hospitals for covid-19 in the Tanah Abang area, Jakarta. At the hospital, it is estimated that dozens of prospective patients commonly line up to get one bed. The treatment has been done for 10 months. The data center at Tanah Abang Hospital, Jakarta, is never empty. Thus, they are now forced to choose and sort outpatients.⁷ According to the Director of Tanah Abang Hospital, Savitri Handayana. The queue

² <https://referensi.elsam.or.id/wp-content/uploads/2014/12/KESEHATAN-SEBAGAI-HAK-ASASI-MANUSIA.pdf> This article was accessed on 30-08-2021

³ Eki Furqon and Edi Mulyadi, The Harmonization of the Central and Local Governments Authority: Handling Public Health Emergencies on Coronavirus Disease 2019, Unifikasi : Jurnal Ilmu Hukum. 7(2). 2020. 205-2014. DOI : 10.25134/unifikasi.v7i2.3569

⁴ Theresia Louize Pesulima & Yosia Hetharie, Perlindungan Hukum Terhadap Keselamatan Kerja Bagi Tenaga Kesehatan Akibat Pandemi Covid-19, SASI, Volume 26 Nomor 2, April - June 2020 : h. 280 - 285 p-ISSN: 1693-0061 | e-ISSN: 2614-2961

⁵ Natasya Nadia Putri and Heru Suyanto, Legal Protection for Victims of Domestic Violence: The Pandemic of Covid-19, UNIFIKASI : Jurnal Ilmu Hukum Volume 08.01.2021

⁶ Silvano Hajid, Covid-19: Situasi 'Zona Merah' Rumah Sakit Di Tengah Lebih Dari Satu Juta Kasus, Ketika Satu Tempat Tidur Diantre Puluhan Calon Pasien <https://www.bbc.com/indonesia/indonesia-55833852> This article was accessed on August 27, 2021

⁷ *Ibid*

of prospective patients whose data has been entered until January 2021 has reached 6,833 patients. The referrals came from a number of private and government hospitals, including the Wisma Athlete Emergency Hospital in Jakarta. There are also referral patients from Serpong (South Tangerang) and Depok (West Java) who have also been recorded to be on the waiting list. At a minimum, 10 prospective patients have been waiting for one bed. If there is a surge, 20 prospective patients are waiting for an empty bed. Even then, not all patients can be accepted because of the limited number of beds and no equipment for patients with certain conditions. Even though, there has been an addition of bed capacity for Covid patients, it has changed the function of the room in the hospital.⁸

Accordingly, the authors are interested in examining Consumer Protection for Hospital Beds scarcity due to Covid-19 Judging from Law Number 8 of 1999, Consumer Protection (in this study is called UUPK) Juncto Law No. 44 of 2009 on Hospitals. The study formulated the following research questions: How are the protection of the consumer rights and the violations of hospital obligations as business actors on the hospital beds scarcity, Covid-19 impact referring to the aforementioned laws? How is the legal analysis on hospital beds scarcity during the pandemic of covid-19 based on the aforementioned laws?

RESEARCH METHODS

The study employed normative-juridical methods. The researchers conducted a study to analyze both laws written in books. Based on this method, the researchers have to manage a logical assessment of relevant legal provisions, the implementation of consumer protection. Specifically, it should be based on Law No. 8 of 1999 on consumer protection juncto law No. 44 of 2009 on Hospitals

RESULTS AND DISCUSSION

1. Defining Consumer Protection

Consumer protection is a term used to describe the legal protection of consumers' needs from things that can harm them. In the study of law, this term is still relatively new, especially in Indonesia. In developed countries, on the other hand, this is starting to be discussed along with the industry and technology developments. The Consumer Protection Act is basically encouraged by consumers and business actors who are imbalanced in practice. The position of business actors who offer, sell, and promote their products makes them stronger than consumers. This thing may exist. It is supported by the need for information at the pre-transaction stage, the lack of choices for other products, limited knowledge, confusing product promotions, and consumer education ability to digest billboard sentences and others, causing the position of consumers towards the business actors are getting weaker.⁹

Consumer protection is all efforts that ensure legal certainty to provide consumers protection. Law Number 8 of 1999 concerning Consumer Protection was formulated with reference to the philosophy of national development. This is to build a complete Indonesian human being based on the state philosophy of the Republic of Indonesia, namely the state foundation of Pancasila and the state constitution. This Law on Consumer Protection is an umbrella that integrates and strengthens law enforcement in consumer protection. In addition, there is the possibility of forming a new law containing provisions that protect consumers.¹⁰

⁸ *Ibid*

⁹ Anthon Fathanudien, Pertanggungjawaban Terhadap Konsumen Atas Iklan-Iklan Yang Menyesatkan Di Era Globalisasi, Jurnal Unifikasi, ISSN 2354-5976 Vol. 2 No. 2 July 2015

¹⁰ Nuzul Rahmayani, Tinjauan Hukum Perlindungan Konsumen Terkait Pengawasan Perusahaan Berbasis Financial Technology di Indonesia, Volume 2 No. 1, Juli 2018 P-ISSN: 2580-4227, E-ISSN: 2580-698X

Article 1 point 1 of Law Number 8 of 1999 concerning Consumer Protection states: "Consumer protection is the efforts that guarantee legal certainty in providing consumers protections".

Article 1 of the UUPK indicates that consumer protection is the government's effort to ensure legal certainty in protecting consumers. The UUPK aims to protect the consumers' interest in transactions which is also becoming a reference for business actors to improve the quality of their selling products.¹¹

Talking about consumer protection means questioning the guarantee or certainty on the fulfillment of consumer rights. Consumer protection in a broad scope includes obtaining goods and services. The scope of these two aspects are explained as follows

1. Protection against the possibility of being handed over to inappropriate consumers of goods and/or services from what agreed upon or violating the law's provisions. In this regard, it includes the issues related to the use of raw materials, production processes, distribution processes, product design, and others, ensuring if they have met the standards of consumer safety and security. In addition, it also covers the issue of how to get a reimbursement if the loss is found due to inappropriate use or consumption.
2. Protection against the imposition of unfair terms on consumers. It covers a standard contract, price, after-sales service, and others. In other words, this relates to producers' behavior in producing and distributing their products
 - a. The Purpose of Consumer Protection Act
 - b. The objectives of the Consumer Protection Act are stated in article 3 of the UUPK, as follows:
 - 1) Improving consumer awareness, ability, and being more independent in protecting themselves.
 - 2) Improving consumers' dignity by preventing negative access to the use of goods and/or services.
 - 3) Increasing consumers' empowerment to choose, determine, and demand the right as consumers
 - 4) Creating a consumer protection system, legal certainty, and information disclosure as well as access to information.
 - 5) Growing business actors' awareness of the importance of consumer protection. Thus, an honest and responsible attitude grows in doing business.
 - 6) Improving the goods and/or services quality that ensures the continuity of business production on goods and/or services, health, comfort, security, and consumers' safety.

Consumer protection is a matter of human interest. Therefore, it becomes all nations' hope to make it happen. Meanwhile, realizing consumer protection means creating various dimensions of relationships interconnected and interdependent between consumers, entrepreneurs, and the government.¹² In line with that, one of the members of the Drafting Team for the Law on Consumer Legal Protection at the Ministry of Industry and Trade mentioned the purpose of the planned implementation, development, and regulation of consumer protection is to increase consumers' dignity and awareness. Furthermore, it is also

¹¹ Widi Nugrahaningsih, Mira Erlinawati, Implementasi Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Terhadap Bisnis Online ISSN: 1693-0819 Tentang Perlindungan Konsumen E-ISSN : 2549-5275 Terhadap Bisnis Online

¹² Husni Syawali dan Sri Imaniyati, *Hukum Perlindungan Konsumen*, Mandar Maju, Bandung, 2000, p. 7.

aimed to indirectly encourage business actors to do their business with a full sense of responsibility.¹³

A goal is impossible without a background. This also applies to the purpose of consumer protection as mentioned in the following preamble to the UUPK:¹⁴

- a. Realizing economic democracy.
- b. Encouraging goods product and/or services diversification as a means of increasing the welfare of the wider community in the globalization era and ensuring their availability.
- c. Economic globalization must continue to guarantee the welfare improvement of a wider community as well as the quality, quantity, and security certainty of goods and/or services.
- d. Increasing consumers' dignity through law (UUPK). Achieving balance protection on consumers' interest and business actors in a healthy economy world.

Article 3 on the Consumer Protection Act contained as in national development. The objectives of existing consumer protection become the final target obligatory achieved. Particularly, the implementation of consumer protection law development.¹⁵

c. Legal Principles of Consumers Protection

Basically, legal principles are a law foundation and the implementation of its regulations cannot be ruled out. Mertokusumo provides a review of the legal principles as follows:¹⁶

That legal principle is not a concrete law, but a general and abstract of basic thought, or is the background of the concrete rules that existed in and behind any legal system embodied in legislation, a judge's decision that is considered as positive law, and is easily found by searching common properties or characteristics in concrete rules.

The principle of consumer protection in Article 2 of UUPK 8/1999 covers:

- a. The benefit principle is to mandate that all efforts in the implementation of consumer protection must provide the maximum benefit for a whole consumers' interests and business actors.
- b. The principle of justice is intended that the peoples' participation can be maximally realized. Furthermore, it is to provide opportunities for consumers and business actors to obtain the rights and carry out the obligations fairly.
- c. The principle of balance is to provide a balance between the consumers', business actors', and the government's interests in a material and spiritual sense.
- d. The principle of consumer security and safety is to provide guarantees in terms of consumers' security and safety
- e. The use and utilization of goods and/services that are consumed and used.
- f. The principle of legal certainty is for business actors and consumers to obey the law and obtain justice, to provide consumer protection, and to guarantee the State a legal certainty.
- g. In the context law of consumer protection in Indonesia, Law No. 8 of 1999 concerning Consumer Protection, the consumer's and business actors' rights and obligations have been regulated clearly and firmly. The consumers' rights and obligations are regulated in

¹³ *Ibid.*

¹⁴ Yusuf Sofie, *Pelaku Usaha, Konsumen dan Tindak Pidana Korupsi*, Ghalia Indonesia, Jakarta, 2002, p. 30.

¹⁵ Ahmadi Miru dan Sutarman Yodo, *Op. Cit.*, p. 34.

¹⁶ *Ibid* p, 20-21.

Articles 4 and 5. Meanwhile, the business actors' rights and obligations are regulated in Articles 6 and 7.¹⁷

- d. Consumer rights, in this case, are the community. The hospital beds scarcity due to Covid-19 impact reflecting on Law Number 8 of 1999, The Consumer Protection

1. Defining consumers

Generally, consumers are defined as the final users of the product delivered to them by the entrepreneur.¹⁸ That is, everyone who gets goods to use or not and to trade or re-trade.¹⁹ According to Article 1 point 2 of Law Number 8 of 1999, the Consumer Protection, it is stated that: Consumers are every person who uses goods and/or services available in the community for their benefits, families, other people, and other living creatures and not for trading.

As mentioned in the explanation on the law of Article 1 point 2, the consumer refers to the final consumer known in economic literature. In other words, everyone is a consumer. They need goods and services to maintain their life, family, or property. The issue of the relationship between producer-business actors with consumers is commonly associated with products (goods and/or services) made by technology. The issue of consumer protection is closely related to technology issues. Particularly, manufacturing and technology allow technology products reached by all levels of society. This indicates all people are allowed to be involved in the consumer protection issue.²⁰

The existence of free trade through internet media supported by advances in telecommunications and information technology is not only bringing a positive impact to consumers but also bringing a negative impact resulting in consumers losses. One of the losses experienced by consumers with free trade is the imbalanced position of consumers and business actors. In addition, the consumers are only the objects of business actors' activities to get the maximum profit. The very weak position is due to a low level of consumer awareness of their rights. Therefore, the Consumer Protection Act becomes a strong legal basis for the government and consumer protection institutions. This is done through consumer development and education.²¹

Referring to the aforementioned condition, efforts are needed to empower the consumers. For instance, forming the laws to protect consumers' interests in an integrative and comprehensive manner and can be effectively applied in the community. The law establishment is to encourage a healthy business by providing quality goods and/or services.

Consumers are ensured every person or individual uses goods and or services for their own, family, or other parties' needs. Jhon F. Kennedy, former President of the United States

¹⁷ Dedy Pariadi, Pengawasan E Commerce Dalam Undang-Undang Perdagangan Dan Undang-Undang Perlindungan Konsumen, *Jurnal Hukum & Pembangunan* 48 No. 3 (2018): 651-669 ISSN: 0125-9687 (Cetak) E-ISSN: 2503-1465 (Online)

¹⁸ Mariam Darus, *Perlindungan Terhadap Konsumen Ditinjau dari Segi Standar Kontrak (Baku), makalah pada symposium Aspek-aspek Hukum Perlindungan Konsumen*, BPHN- Binacipta, Jakarta, 1980, p. 59-60.

¹⁹ Az Nasution, *Iklan dan Konsumen (Tinjauan dari Sudut Hukum dan Perlindungan Konsumen, dalam Manajemen dan Usahawan Indonesia, Nomor 3, Tahun XX111, LPM FE-UI, Jakarta, 1994, p. 23.*

²⁰ Janus sidabalok, *Op. Cit*, p.14-15.

²¹ Adrian Sutedi, *Tanggung Jawab Produk dalam Hukum Perlindungan Konsumen*, Ghalia Indonesia, Bogor, 2008, hlm. 2.

said consumers are all of us, they are an economic group that influences and is influenced by most decisions on civil and public issues of economy.²²

Furthermore, various definitions of consumers can be classified into three parts as follows:

1. In general, consumers are goods and/or services consumers, users and/or beneficiaries for certain purposes.
2. Intermediate consumers are other goods and/or services customers, users, and/or beneficiaries for trading (distributors), and commercial purposes. In this case, these consumers are similar to business actors.
3. End consumers are customers, users, and/or utilization of goods and/or services to fulfill their own, family, or household needs and not for trading.

The protection of the latter type is clearly regulated in the Consumer Protection Act. In conclusion, consumers refer to anyone who uses, utilizes, or spends certain goods and/or services for their own and not for trading.²³

2. Consumer Obligations, Consumer obligations according to UUPK regulated in article 5 cover:
 1. Reading and following the information instructions and correct usage procedures
 2. Having good faith in purchasing goods and/or services
 3. Paying as agreed
 4. Following the proper dispute resolution

3. Consumer Rights

In general, the legal definition of rights is legal interests protected by law. Meanwhile, interests are demands expected to fulfill. Interest essentially contains a power that is guaranteed and protected by law in doing so.²⁴ Basically, rights come from three things. First, human nature as human beings created by God. This is called human rights. Second, rights exist from the law. This refers to rights granted by state law to humans as citizens. Third, rights arise from legal relations between a person and another by an agreement. For example, A rents B's house for 1 year. This right arises from the lease agreement relationship. In other words, it still gets legal protection if the agreement is to make such rights legal.²⁵ Independent consumers are consumers who carry out activities based on their own initiative, will, knowledge, and insight. In realizing independent consumers, consumers must well recognize, discover, and understand their rights and obligations as consumers based on the applicable regulations in Indonesia, Law Number 8 of 1999 concerning Consumer Protection.

In addition, an independent consumer means the consumption and/or utilization of a certain item/product or service is not based on other people's information or saying but really understands the product information. For instance, the safety and comfort levels in consuming the product. If a violation by business actors exists and causes harm, the consumer should file a complaint to the consumer dispute resolution agency or to a private institution that handles this issue.²⁶

²² Yusuf Sofie, *Penyelesaian Sengketa Konsumen Menurut Undang-Undang Perlindungan Konsumen*, Citra Aditya Bakti, Bandung, 2003, hlm. 13.

²³ Syariah, *Hukum Perlindungan Konsumen di Indonesia*, Untirta Press, Serang, 2015, hlm. 6-7.

²⁴ Sudikno Mertokusumo, *Mengenal Hukum, Suatu Pengantar*, Liberty, Yogyakarta, 1986, hlm. 40.

²⁵ Syariah, *Ibid*, hlm 7-8

²⁶ Syariah dan Dini Handayani, *Hak dan Kewajiban Konsumen Berdasarkan Undang- Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen dalam Mewujudkan Konsumen Mandiri*, *Dinamika Jurnal Pengabdian*, Volume 2No 1, LPPM, Untirta, Januari 2012 hlm. 5.

UUPK formulates a number of important consumer rights. According to Article 4 of Law Number 8 of 1999 concerning consumer protection, there are nine consumer rights. The eight rights are explicitly regulated in the UUPK while one right is regulated in other statutory provisions. The rights are:

- 1) The right to comfort, security, and safety in consuming goods and/or services; This right is to ensure consumers' safety and security in the use of the goods and/or services obtained. Thus, consumers can avoid losses (physical or psychological) in product consumption.
- 2) The right to choose and obtain goods and/or services echoes the exchange rate and the promised conditions and guarantees; This right is to give consumers the freedom to choose certain products to their needs, without any pressure from outsiders. Accordingly, consumers have the right to buy or not or to choose the quality and quantity of product.
- 3) The right to correct, clear, and get honest information on goods and/or services condition and guarantee; The right to correct information is to help consumers get a proper picture of a product. The information enables consumers to choose the desired product to their needs and avoid losses due to errors in product use.
- 4) The right to have their opinions and complaints listened to the goods and/or services used; The right refers to consumer's right not to be further harmed or the right to avoid being harmed. This right can be conveyed individually or collectively, directly or represented by a certain institution, such as YLKI.
- 5) The right to get advocacy protection and to properly resolve consumer protection disputes. This right is to restore consumers' conditions harmed by-product use through legal channels.
- 6) The right to obtain consumer guidance and education; The right to education is to acquire necessary knowledge and skills to avoid losses due to product use. This education enables the consumers to be more critical and careful in selecting a product they need.
- 7) The right to be appropriately and honestly treated or served and not discriminated; The discrimination should not be on ethnicity, religion, culture, region, education, rich, poor, and another social status.
- 8) The right to acquire compensation and/or replacement of the unsuitable and improper goods and or services received as agreed.
- 9) Rights stipulated in the provisions of other laws and regulations

2. Hospitals Obligations That Violate Consumer Rights, Hospital Beds Scarcity Of Covid-19 Impact From Law Number 8 Of 1999 On Consumer Protection Perspective

1) Defining Business actors

Business actors are frequently referred to as entrepreneurs who produce goods and services. In this sense, it includes manufacturers, wholesalers, suppliers, and professional retailers. Every person/entity participates in the provision of goods and services to reach consumers. Producers are not only defined as entrepreneurs taking on manufacturing to produce products, but also those related to product delivery/circulation to consumers.²⁷

Article 1 point 3 of Law Number 8 of 1999 concerning Consumer Protection states that a business actor is every individual or business entity, a legal entity or not a legal entity established and domiciled or carries out activities within the jurisdiction of the Republic of

²⁷ Janus Sidabalok, *Op, Cit*, p. 13.

Indonesia, either personal or all together through the implementation of various business activities agreement²⁸

According to the aforementioned act, business actors are companies, corporations, BUMN, cooperatives, importers, traders, distributors, and others including hospitals.

2) Business Actors Obligations

Referring to the provisions of Article 7 of the Consumer Protection Act, the obligations include:

1. Have good intentions in doing business activities.
2. Provide correct, clear, and honest information on goods and/or services conditions and guarantees and provide explanations for its use, repair, and maintenance.
3. Treat or serve consumers correctly and honestly, and not discriminatory.
4. Guarantee the quality of goods and/or services produced and/or traded based on the applicable quality standards of goods and/or services provisions.
5. Provide opportunities for consumers to test, and/or try certain goods and/or services and provide guarantees and/or warranties for goods manufactured and/or traded.
6. Provide compensation, and/or replacement for losses due to the use and utilization of traded goods and/or services.
7. Provide compensation and/or replacement of the goods and/or services received or utilized that do not suit the agreement.

3) Business Actors Responsibilities

In general, claims for consumers' compensation for losses suffered from using the product, whether in the form of material, physical, or mental losses, can be based on several aforementioned provisions, which in general there are only two categories, claims for compensation based on default and unlawful acts.²⁹

Business actors' responsibility for consumers' losses is regulated in the UUPK specifically in chapter VI, starting from article 19 to article 28, as follows:

1. Seven Articles: Article 19, Article 20, Article 21, Article 24, Article 25, Article 26 and Article 27 regulate the responsibility
2. Business actors.
3. Two articles, Article 22 and Article 28 regulate the evidence.
4. An article, Article 23, regulates dispute resolution. For instance, business actors do not fulfill their obligations to provide compensation to consumers.

Principally, of the seven articles that regulate business actors accountability can be further divided into:³⁰

- a) Articles that explicitly regulate business actors' responsibility for consumers' losses are: Article 19, Article 20, and Article 21.
- b) Article 24 regulates the responsibility transfer from one business actor to another.
- c) Articles 25 and 26 relate to business actors' after-sales services for goods and/or services traded.

4) The Relationship between Business Actors and Consumers

²⁸ Az Nasution, *Konsumen dan Hukum*, Pustaka Sinar Harapan, Jakarta, 1995, p. 53.

²⁹ Ahmad Miru dan Sutarnan Yudo, *Hukum Perlindungan Konsumen, Edisi Revisi*, Raja Grafindo Persada, Jakarta, 2015, p. 31.

³⁰ Gunawan Widjaya dan Ahmad Yani, *Op. Cit*, p. 65.

A legal relationship is a relationship between two or more legal subjects regarding one party's rights and obligations against others. Legal relations are possible for fellow legal subjects and between legal subjects and objects. Relationships between fellow legal subjects exist in people, people and legal entities, and fellow legal entities. The legal relationship between legal subjects and objects is the rights controlled by legal subjects over these objects. It covers tangible objects, movable objects, or immovable objects.³¹ This legal relationship will continuously exist since consumers and business actors are in mutual need. Legal relationships can directly and indirectly occur. The direct relationship is the direct bond of producers and consumers by the agreement without ignoring other types of agreements. Goods transfer from producers to consumers is generally from buying and selling agreements, both orally and in writing. Meanwhile, the indirect relationship is a relationship that is not bound by a direct agreement between consumers and producers because of other parties' intermediately. Goods and/or services sold by business actors must guarantee the quality of a product. Thus, the consumers who buy can enjoy the use, utilization, and use of the said goods and/or services.³²

e. Legal analysis on hospital beds scarcity amidst the Covid-19 pandemic

Responding to this phenomenon, the consumer protection is highly urgent. To date, the number of positive Covid-19 patients in Indonesia keeps increasing. This includes infected people and those who died. As written on the official website of the Covid-19 Handling Task Force, as of February 4, 2021, the number of positive cases reached 1,123,105 people, of which 31,001 people died. The good news is the number of recovered patients also reached 917,306. However, in recent weeks, additional cases are always above 10,000 cases. This makes health facilities experience a "crisis" which is very worrying. Particularly, the beds' availability in hospitals for infected patients.³³

According to Circular Letter number HK 02.01/Menkes/12/2021, ratified on January 11, 2021, improving treatment capacity for covid-19 patients at the Covid-19 Service Provider Hospitals can be done by dividing three zones of infected areas:³⁴

Increasing the treatment room capacity for COVID-19 patients can be done by transferring the following functions:

- a) Vertical UPT Hospital located in zone 1: Increase hospitalization capacity for Covid 19 by converting a minimum of 40% of the total bed capacity
- b) Vertical UPT Hospital located in zone 2 : Increase the hospitalization capacity for Covid 19 by converting a minimum of 30% of the total bed capacity
- c) Vertical UPT Hospital located in zone 2: Increase the hospitalization capacity for Covid 19 by converting a minimum of 20% of the total bed capacity

The globalization era has changed people's lives with the development of information and transaction technology. Technology-based information has changed people's mindset and behavior who previously had face-to-face meetings shifted to computers and the internet.³⁵ In this case, the Ministry of Health has an inpatient clinical information system (SIRANAP) which can be accessed through the Playstore and App Store, to learn the beds'

³¹ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, (Prenada Media Grup, Jakarta, 2012), p 254.

³² Ahmadi Miru, *Ibid*, p 34

³³ Ketersediaan Tempat Tidur Di Rumah Sakit Covid-19 "Kritis", BPKN Tawarkan Solusi <https://bpkn.go.id/posts/show/id/2099>

³⁴ Circular Letter number HK 02.01/Menkes/12/2021, Treatment Capacity for Covid-19 Patient at Covid-19 Service Provider Hospitals

³⁵ Suwari Akhmadhian dan Asri Agustiwi. "Perlindungan Hukum Terhadap Konsumen dalam Transaksi Jual Beli Secara Elektronik di Indonesia". *Jurnal Unifikasi*, ISSN 2354-5976 Vol. 3 No. 2 July 2016.40-60.

availability in hospitals throughout Indonesia. However, if we look at it specifically per city or per province, the bed usability in several areas reaches 80%. This is very worrying because the development rate of Covid-19 is very high in the area.³⁶

Patient rights, written in Law no. 44 of 2009 concerning Hospitals in Article 32 point e:³⁷

“Getting effective and efficient services to avoid physical and material losses of patients;”

The hospital is obliged to respect and protect the patients' rights. This is firmly stated in article 29 point m of Law no. 44 of 2009 concerning Hospitals.³⁸ In this case, the patient is positioned as a consumer. The consumer is entitled to consumer protection. Consumer protection according to Law no. 8 of 1999 concerning Consumer Protection Article 1 (1) are:³⁹ "Consumer protection is all efforts that guarantee legal certainty to provide consumers protection." The principle of consumer protection according to article 2 of Law no. 8 of 1999 concerning Consumer Protection is: ⁴⁰ "Consumer protection is based on benefits, justice, balance, consumer safety and security, and legal certainty."

Legal certainty requires how the law is implemented, regardless of how bitter it is (fiat justitia et pereat mundus: even though the world is collapsing, the law must be enforced). This is to create orderliness in society. For instance, "Whoever pollutes the environment must be punished," this provision demands anyone (no matter their position) who commits an act of polluting the environment, must be punished.⁴¹ Basically, the legal goals to be achieved are legal certainty, welfare, justice, and prosperity for all Indonesian people. The role of law in social life is as something that protects, gives a sense of security, peace, and order to gain peace and justice for everyone.⁴² The legal substance in its form, statutory regulations has been accepted as an official instrument that has aspirations to be developed. This is pragmatically oriented to deal with contemporary social problems.⁴³ This should be properly implemented in the community and vice versa.

Indonesia makes Pancasila as the state basis and is in line with human values as in the second principle, Just and Civilized Humanity. This means upholding human values, awareness of human attitudes and actions to the potential of the human conscience of norms and values in general. Humans have freedom of desires, are bound by limitations and responsibilities to the state and society, and are limited by their environment. Just and civilized humanity is rooted in the teachings of God Almighty, which is in accordance with human nature as His creation. Therefore, the way we treat other people should meet human values and their nature. Humans must respect and do not look down or demean each other. We are all equal in god's eyes and only differ in terms of piety⁴⁴

³⁶ Ketersediaan Tempat Tidur Di Rumah Sakit Covid-19 “Kritis”, BPKN Tawarkan Solusi, *Ibid*

³⁷ Law No. 44 of 2009 on Hospitals.

³⁸ *Ibid*

³⁹ Law No. 8 of 1999 concerning Consumer Protection

⁴⁰ *Ibid*

⁴¹ Suwari Akhmaddhian, Penegakan Hukum Lingkungan Dan Pengaruhnya Terhadap Pertumbuhan Ekonomi Di Indonesia (Studi Kebakaran Hutan Tahun 2015), *Jurnal Unifikasi*, ISSN 2354-5976 Vol. 03 Nomor 01 Januari 2016

⁴² Gios Adhyaksa, Penerapan Asas Perlindungan Yang Seimbang Menurut KUHPerdara Dalam Pelaksanaan Perjanjian Kerja Untuk Waktu Tertentu Dihilangkan Dengan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, *Jurnal Unifikasi*, ISSN 2354-5976 Vol. 3 No. 2 Juli 2016

⁴³ Suwari Akhmaddhian dan Gios Adhyaksa, Implementasi Penegakan Hukum Lingkungan Di Daerah (Studi Di Kabupaten Kuningan), *Jurnal Unifikasi*, ISSN 2354-5976 Vol. 03 Number 01 January 2016

⁴⁴ Laurensius Arliman S, Perlindungan Hukum Bagi Anak Dalam Perspektif Pancasila Dan Bela Negara, *Unifikasi : Jurnal Ilmu Hukum*, p-ISSN 2354-5976, e-ISSN 2580-7382 Volume 05 Nomor 01, Januari 2018 <https://journal.uniku.ac.id/index.php/unifikasi>

The state puts in the law that consumers, in this case, patients must get justice, safety, and legal certainty. Even though the provisions have been stated in Circular Letter number HK 02.01/Menkes/12/2021 ratified on January 11, 2021 regarding the improvement of treatment capacity at the Covid-19 Service Provider Hospital. Referring to the incident quoted on the 28th January 2021 and up, this still occurs. In fact, these rules should be able to eliminate public anxiety of handling Covid-19. In addition, the patients' rights are also stated in the Hospital Act and the 1945 Constitution of the Republic of Indonesia Article 28H paragraph (1) as follows:⁴⁵ "Everyone has the right to live in physical and spiritual prosperity, to live and to obtain health services." This means the state must provide good health services for the community. This needs close attention and the hospital needs to protect the patients' rights. The synergy between the hospital and the government must be maximized to minimize the number of covid-19 victims. The accuracy and speed of handling this case become the ultimate key to minimizing the increasing number of victims. In addition, the quality of public services is set as a measurement to see if the existence of bureaucratic reform in a government organization (public sector).⁴⁶

According to the Chairman of the Communication and Education Commission of BPKN, Johan Efendi, all parties including the Covid-19 Task Force, the central and regional governments, the Ministry of Health and hospitals, are open to hospital capacity and beds availability in handling Covid-19. All information must be communicated transparently to the public. Thus, people know the actual situation happening at the hospital and have a "sense of crisis" that the pandemic is not over yet. Accordingly, the health protocols, 5M, and 3T can continue to be implemented actively. In addition, data must be integrated so data at the center is similar to data in the regions. In addition, the data must also be real-time. The data conveyed and accessed by the community is a direct condition that exists. We found data in this real-time digital era is delayed. As mentioned earlier, the beds' availability in hospitals reaches 80%. On the contrary, it is full and even exceeds the capacity where patients are treated in hospital chairs. This is what we have to work on.⁴⁷

CONCLUSION

The hospital beds scarcity in the pandemic occurred in red zone areas. Take an example, Jakarta. The best treatment was done to decrease the number of patients. The unpredictable surge of patients made hospitals--the public health service agencies totally prepared. If they were linked to the regulations applied, the UUPK and the Hospital Law, this is a violation of the obligations that should be carried by hospitals. Furthermore, this requires government participation.

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⁴⁶ Suwari Akhmaddhian, Reformasi Birokrasi Bidang Perizinan Berdasarkan Undang-Undang Nomor 25 Tahun 2009 Tentang Pelayanan Publik (Studi Di Kabupaten Bogor, *Sosiohumaniora*, Volume 16 No. 2 Juli 2014: 206 - 214

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