



Journal Homepage: - www.journalijar.com
**INTERNATIONAL JOURNAL OF
 ADVANCED RESEARCH (IJAR)**

Article DOI: 10.21474/IJAR01/5321
 DOI URL: <http://dx.doi.org/10.21474/IJAR01/5321>



RESEARCH ARTICLE

RECONSTRUCTION OF PATIENT'S LAW PROTECTION ON X-RAY USE FOR HEALTH BASED ON VALUE OF JUSTICE.

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Manuscript Info

Manuscript History

Received: 03 July 2017
 Final Accepted: 05 August 2017
 Published: September 2017

Key words:-

Reconstruction, Patien's Law Protection,
 X-Ray, Health, Value Of Justice.

Abstract

The purpose of this study was to find the reconstruction of legal protection of patients in hospital on the use of x-rays in the health field that have not been based on the value of justice. The method of research that will be used is socio legal, to see Through strong regulation for patient protection by stricter supervision to hospital in health service implementation using x-ray method. This study resulted in an Integrated Global Patient Theory formulated in the legal reconstruction of several laws and regulations that dealt directly with the problem of abuse of x-rays to patients, namely the Health Act, the Medical Act, the Hospital Act and several health minister Regulation who deals with all forms of health services by x-ray method.

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Introduction:-

X-rays are very helpful in health service, but despite it had many benefits for humans it has materials that have a high level of danger, that is the nature of radiation that if exposed to someone will make another disease. Therefore the need to do radiation protection, which is the action taken to reduce the influence of Radiation Exposure.¹ The use of x-rays in the field of health is very helpful and very beneficial to humankind, but if not in strict supervision in the utilization it will also cause other genetic disorders in other words that in the use of x-rays for health should be in a limited dose, ie The radiation level that in accordance with Article 31 of the Regulation of the Head of Bapeten Number 08 Year 2011.²

During this time when a patient needs treatment or irradiation using X-rays, the patient's protection is only about the technical radiation protection standard only or standard operational procedures only. In the Law of the Republic of Indonesia Number 29 Year 2004 concerning Medical Practice concerning Medical Record only contains notes on patient identity, patient examination, diagnosis, medication, action and other services either performed by the doctor along with the completeness of the note, other than x-rays, Laboratory results and other information in accordance with their scientific competence. In the Indonesian legal system there is no legislation that regulates the record or medical record of a patient that has been exposed to an overdose of X-ray radiation within one year. Including the society around the radiology room that is unconsciously exposed to x-ray radiation. This is very detrimental to the patient and society, because if the x-ray radiation is not visible but the effect is very unusual that will cause other diseases.

¹ Sjahriar Rasad, 2005, *Radiologi Diagnostik*, Gaya Baru, Jakarta, p. 15.

² Peraturan Kepala Bappeten No. 08 tahun 2011.

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The doctor-patient agreement includes three legal dimensions of civil, administrative and penal.³ In the case of administrative concepts should be placed as a premium ultimatum as long as the physician has performed his duties in accordance with the cause of errors in the practice of medicine can occur with no indication of Standard Medical Profession (SPK), Standard Operating Procedures (SOP), and Informed Consent (IC) through MKEK . If MKEK declares an error in the SPK, SOP and IC, then the doctor may be sued in a civil court.⁴ of course the very concept of penal law is based on the essence of the penal law itself, namely ultimum remedium, as long as it is not an experimental or deliberate act that begins with a legally verifiable intention. However, if it happens otherwise it becomes premium remedium without going through a trial code of ethics.

Health laws include "lex specialis" laws, specifically protecting the duty of the health profession (provider) into a human health service program toward the objectives of the "health for all" declaration and the special protection of "receiver" patients for health care.⁵ By itself this health law regulates the rights and obligations of each service provider and recipient of the service, either as an individual (patient) or a community group.⁶

In all legislation existing in Indonesia has not been regulated regarding the legal protection of patients against the use of X-ray radiation doses, since x-rays themselves have a very high risk or even cause death and permanent disability when its use in the health field is not Conscientious and the patient receives too much dose from the x-rays themselves. Therefore, the need for legal protection for hospital patients on the use of x-rays in the field of health that is based on the value of justice, where the general public does not know the limits of safe dose received during hospitalization and treatment. With the above explanation, the researcher conducts research on hospital patient's legal protection on the use of x-ray in the field of health based on the value of justice.

Method of Research:-

The authors in this study uses the paradigm of positivism, a paradigm that views that the science of law is only dealing with legislation alone. This research uses juridical normative and juridical empirical approach. The normative juridical approach is done by examining and interpreting the theoretical matters concerning principles, conceptions, doctrines and legal norms relating to the proving of crime cases. The empirical juridical approach is conducted with field research aimed at the application of crime procedure law in crime cases.

This research uses primary data, ie data obtained directly from the source, either through interviews, observations or reports in the form of unofficial documents which are then processed by the researcher, and secondary data, that is data taken from library materials consisting of 3 (Three) sources of legal materials namely primary, secondary and tertiary legal materials. Primary data, ie data obtained directly from the source, either through interviews, observations or reports in the form of unofficial documents that are then processed by researchers, and secondary data, ie data taken from the library material consisting of 3 (three) sources of materials Law namely primary, secondary and tertiary legal materials.

Research Result and Discussion:-

The meaning of Pancasila:-

The meaning of the basic values of Pancasila is studied in a philosophical perspective, namely, Pancasila as the basis of state philosophy as well as the philosophy of life of the Indonesian nation that is essentially also a systematic value. The function of philosophy relating to Pancasila is to question and answer whether the basic life of politics in the nation and state.⁷ Therefore, Pancasila taken from the noble values of the Indonesian nation is essentially religious, humanitarian, unity, democracy and justice. Besides, Pancasila is characterized by the principle of kinship and mutual cooperation and recognition of individual rights.

Pancasila as the basic philosophy of the nation and the Republic of Indonesia is an inseparable value with each of its principles. to better understand the values contained in each Pancasila precepts, it can be described as follows :⁸

³ Soerjono Soekanto dan Herkutanto, *Pengantar Hukum Kesehatan*, (Bandung: Remadja Karya, 1987), p. 19.

⁴ Bahder Johan Nasution, 2005, *Hukum Kesehatan Pertanggungjawaban Dokter*, Jakarta, Rineka Cipta, p. 11.

⁵ Cecep Triwibowo, 2014, *Etika dan Hukum Kesehatan*, Nuha Medika, Yogyakarta, p. 16.

⁶ Soekidjo Notoatmodjo, 2010, *Etika dan Hukum Kesehatan*, Rineka Cipta, Jakarta, p. 44.

⁷ Gunawan Setiardja, *Hak-hak Asasi Manusia Berdasarkan Ideologi Pancasila*, Yogyakarta: Kanisius, 1993, p. 56.

⁸ Soediman Kartohadiprodjo, *Pancasila sebagai pandangan hidup bangsa*, Jakarta, Gatra Pustaka, 2010, p. 32.

1. Belief in the Oneness of the God, encompassing and animating the other four precepts. In this precept contained the value that the established state is the manifestation of human destiny as the creature of the almighty God.
2. Just and Civilized Humanity, Humanity comes from the human word that is a cultured creature with the potential of thought, taste, intention and inventiveness. That potential puts people at a high level of dignity who are aware of their values and norms. Humanity primarily means the nature and character of human beings in accordance with dignity.
3. Unity of Indonesia. Unity contains the notion of unity of various patterns that vary into one roundness. The unity of Indonesia in this third principle includes unity in ideological, political, economic, socio-cultural and security terms. Unity of Indonesia is the unity of the nation that inhabits the entire territory of Indonesia. Unity Indonesia is a dynamic factor in life.
4. Democracy Led By Wisdom, Prudence in Communal / People's Representation. The people are a group of people who dwell in a certain country territory. This means that the Indonesian nation embraces a democratic system that places the people at the highest position in the hierarchy of power.
5. Social Justice for All Indonesians. Social justice means justice prevailing in society in all aspects of life, both material and spiritual. All the people of Indonesia means for everyone who becomes the people of Indonesia.

The meaning and purpose of the civilized term on the second precept, "Humanity is just and civilized" is the realization of the elements of human nature, body, mind, taste, will, and nature of nature individuals and creatures of God Almighty as *causa prima* in unity Single-compound. This is done in the effort of organizing the life of a nation and a state with high dignity. Then on the meaning of "social justice for all Indonesian people" as the achievement that justice should be enforced and equitable for all elements of society. In this case the patient as a society should get justice when its rights are not met.

Just and civilized justice and social justice for all Indonesian people as a patient's guide in achieving a protection because it has been listed directly in the values of Pancasila as the source of all sources of law in Indonesia. In this case the patient in the health field same status as a consumer because it uses health services from health personnel. Called consumers, patients in getting a health service does not mean that its free. Not a few have to pay to get these services. Thus the legal protection for the patient is included in the protection of consumers as well.

Consumer protection law as a form of application of Pancasila values where consumer status is the patient also applied the rules on consumer rights in health law, the law on medical practice and hospital law, where the value of Pancasila for Protecting every consumer's right applied in all aspects of the field that are also in the health field where the rise of a consumer is the patient in the process of health care.

Patient's Law Protection according to NRI 1945 Constitution:-

Welfare are Indonesia's goal⁹ which is the ideals of the Indonesian nation is listed in the preamble of the 1945 Constitution of the State of the Republic of Indonesia, namely the protection of the entire Indonesian nation and the entire blood of Indonesia and the whole of Indonesian's and to promote the national welfare, And participate in the conduct of world order based on independence, eternal peace, and social justice. Based on the provisions of the Constitution of the 1945 Constitution of the State of the Republic of Indonesia Article 28H paragraph (1) clearly emphasizes that everyone has the Have the right to live physically and mentally prosperous, live, and get a good and healthy living environment and are entitled to receive health services, then health as a basic human need is a right for every citizen.¹⁰

Health as one of the elements of general welfare must be realized in accordance with the ideals of the Indonesian nation through sustainable national development based on Pancasila and the Constitution of the Republic of Indonesia Year 1945. Health is a basic human need to live a decent and productive, Controlled health care costs and quality control. Of the 1945 Constitution of Article 28 H and Law Number 36 Year 2009 on Health, stipulates that: "Every person shall have the right to health service." Therefore, every individual, family and society shall have the right to protection of their health, and the state shall be responsible for The fulfillment of the right to live healthy for

⁹ Rahmat Basuki, Gunarto, Anis Masdurohaturun, The ideal role of welfare state in the concept of health social insurance of BPJS based on justice Value, International Journal of Multidisciplinary Research and Development, Volume 4; Issue 7; July 2017. p.188.

¹⁰ Pembukaan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

the population. In the public health service the basic legal protection of the patient is any effort that ensures the legal certainty to provide protection to the patient for the service. This can be seen from the implementation of health services including the implementation of the rights and obligations of patients.

Every human being, especially an Indonesian citizen, since he was born has equal rights in the right to live to maintain his life. No one can buy the life of another person or take the life of another person for any reason. If there is any loss of another person's life with or without any reason, then the person shall bear the punishment in accordance with applicable law. Further regulated in the 1945 Constitution of the State of the Republic of Indonesia on Article 28f which reads: "Every person shall have the right to communicate and obtain information to develop his / her personal and social environment, and shall have the right to seek, obtain, possess, process, store and convey information by Using all available channels. "Everyone has the right to speak and obtain information from anywhere and develop it in the community by using available media and and not harming others or used to find facts then it is permissible." In this case the patient is protected Her right which has the right to get all information related to him / her when using health services related to his or her health and should not be covered for health elements by health workers as health services for the community.

Perlindungan Pasien Rumah Sakit Penggunaan Sinar-X Dibidang Kesehatan Di Beberapa Negara Asing:- Perbandingan kasus di Inggris:-

The slightest mistake made by doctors and other medical staff can endanger the lives of patients. If done correctly, this radiotherapy action can give the patient a chance to recover up to 50 percent.¹¹

In addition, patients treated by Dr. Alem almost fared the same fate. Luckily the patient was saved by a hospital staff who accidentally discovered the mistake of Dr. Alem who is known to treat the left upper area of the patient's lungs, whereas it should be treated the lower right region. The error of this plan was corrected and the patient's health could improve.¹²

"If radiography is done in the wrong area, then the existing tumor will continue to grow and spread," explains Dr. Ernest. Dr Alem was accused of mistakes in the treatment of 5 cancer patients while working as a locus clinical oncologist locally between 2008 and 2010. Now the General Medical Council (GMC) says its treatment is below the expected standard and led to a lawsuit from the patient . If the allegation is successfully proved, then his medical register as a doctor may be revoked in accordance with the provisions of sanctions in the England health legislation.

Comparison of Cases in the United States:-

The case in the United States is a mistake in reporting patient data on medical records. This "too busy" and "overly complicated" is one of the typical reasons that medical professionals are asked why they fail and make the mistake of using an online reporting system where the system is designed to improve patient safety and quality of health services. But a researcher, Johns Hopkins found that the most common reason among radiation oncologists is the fear of getting into trouble and embarrassment.

An anonymous survey by Johns Hopkins for doctors, nurses, radiation physicists and other radiation specialists at North Shore-Long Island is a Jewish health system in New York, Washington University in st.Louis, Missouri, and the University of Miami with a question about the report Those who had experienced inaccurate data events and errors in radiotherapy.¹³

Comparison of Cases in Australia:-

X-Ray results of thousands of patients in Queensland are poorly handled. The Gold Coast Hospital and Health Services Board (GCHHS) revealed X-ray results from 48,000 patients were not examined by Radiologists. Whereas without being read or examined first by radiologists, scanned images X-Ray rays can result in a number of fatal consequences for patients. This finding by Queensland Health Minister, Lawrence Springborg referred to as a "systemic error" because the case is also not recorded in the reports and reviews Official diagnosis by X-ray specialists. Springborg said the Gold Coast Hospital Service and Health Council (GCHHS)) dismantled the matter

¹¹ www.juralindex.com/glidden-ernest-allan, Date Access 21 May 2017.

¹² www.juralindex.com/glidden-ernest-allan, Date Access 21 May 2017.

¹³ www.news-medical.net/news/20111004/15044/Indonesian, Date Access 21 May 2017.

last Thursday and immediately reported the findings to the Health Minister. The Council urges the Ministry of Health to appoint independent experts to evaluate the case related to the impasse.¹⁴

This study is planned to last approximately 3 months. GCHHS Executive Director Ron Calvert said two patients were affected from the condition, but he was unwilling to disclose details of the case. Dr. Greg Slater of Royal Australia and a New Zealand Radiologist said there may be more than two patients affected by the case. He said the X-Ray ray images not read by Radiologists have the potential to have a fatal impact on patients. Happens because radiology is the only skill trained to diagnose a wide range of health problems through X-ray images. "Many specialists are experts in their respective fields, but the image of the X-Ray ray contains a wealth of information from different parts of the body, Apart from the main reason why X-Ray is necessary, "he said." There are many different diseases that can occur in the human body, the body is the storehouse of thousands of rare diseases so that when you add them all the possibilities are there.

Patient's Law Protection in Indonesia:-

The relationship between doctors, hospitals and patients or better known as therapeutic transactions is usually the conflict began. Conflict usually occurs when the parties do not perform its role as expected by the other party. Patient as a party in need of help is in a weak position so often does not have a bargaining position that benefits him. On the other hand, health providers are often unable to establish good communication with patients and their families, as a result of therapeutic transactions that should go well into an unpleasant situation for both patients and doctors Or Hospital.¹⁵

This study focuses on Law 29/2004 on medical practice on whether it has provided adequate legal protection for the patient in the event of malpractice allegations in the use of x-rays in the health field. While the expected benefits of this research as a discourse of scientific development for lecturers, students and others concerned with the development of health law in Indonesia, it shows that the relationship between physicians and patients experiencing various developments in line with the development of society, science and technology and law. Increasing awareness of the patient over his rights also brings his own influence on the patient's perspective in finding solutions to malpractice cases that harm him. The government has tried to accommodate the interests of patients to obtain legal protection by using instruments at laws legislation is not beneficial to patients. The implementation of Law 29/2004 on Medical Practice was not able to answer the question of patient's right if malpractice.

Reconstruction of Patient's Law Protection On X-ray use for health based on Value of Justice:-

The surprising finding shows that X-ray use for health service victim are exist because of uncontrolled practice of using X-rays that are not based on health and humanitarian boundaries. In general, patients who want to check into the hospital for a diagnosis is not to be denied and not given an appeal to suspend the use of the method of X-rays because it has a history that has more than one use X-rays to methods of inspection within one year.¹⁶

The law exists because there are conflicts of interest in the community that potentially cause problems. Law is necessary because it is a social mechanism to solve the problem. Laws are generally undistinguishable from ethics, but the law is specifically distinguished from ethics in terms of specific objectives, scope, benchmarks, authority, and sanctions.

According to Aristotle: "Man is a zoon politicon" or "Man is by nature a political animal". Whereas Thomas Hobbes says: "Humans contain malignant, homo homini lupus". Because malignant then if man is allowed to regulate himself, his ferocity can create a war or a struggle (Bellum Omnium Contra Omnes). That is why it is necessary for the state to regulate life and alignment. Thus, the state is essentially the highest organization of a nation, which inheritably inhabits a particular territory.¹⁷ Kelsen states that the legal system is a system of stairs to the rules of tiered where the legal norms of the lowest had to hold on legal norms are higher, and the rule of law which is

¹⁴ <https://news.detik.com/australia-plus-abc/d-2638112/hasil-x-ray-ribuan-pasien-di-queensland-kurang-ditangani-dengan-baik>, Date Access 21 May 2017.

¹⁵ Bridgit Dimond, *Legal Aspects of Patient Confidentiality*, Cambridge University, p. 9.

¹⁶ Hasil Wawancara Dengan Dokter S Rumah Sakit Swasta Kota Semarang Pada Tanggal 25 November 2016.

¹⁷ Carel van Schaik, *Zoon Politikon; The Evolutionary Origins of Human Political Systems*, University of Southern California, hlm 2.

supreme (as the Constitution) should hold on The most basic legal norm (grundnorm). According to Kelsen the most basic legal norms (grundnorm) are not concrete (abstract). The most basic example of abstract rule of law is Pancasila.¹⁸

Hans Kelsen's theory of much attention is the hierarchy of legal norms and the chain of validity that make up the legal pyramid (stufen theorie). One of the figures who developed the theory was Hans Kelsen's disciple, Hans Nawiasky. Nawiasky theory is called theorie von stufenaufbau der rechtsordnung. The arrangement of norms according to the theory is :¹⁹

1. Fundamental norms of the state (norms fundamental Staats);
2. Basic rules of the state (staats grundgesetz);
3. Formal law (formell gesetz); and
4. Rules of implementation and autonomous regulations (verordnung en autonome satzung).

The fundamental staats of norms are the norms that form the basis for constitution or staats verfassung formation of a country. The legal position of a fundamental Fundamentals norm is as a condition for the enactment of a constitution. The fundamental staats of norm exist first of the constitution of a country.

According to Nawiasky, the highest norm that Kelsen calls the basic norm in a country should not be referred to as grundnorm staats but the fundamental norm Staats, or fundamental norms of the state. Grundnorm is essentially unchanged, while the highest norm is changed for example by means of a coup or revolution. The theory of the ladder illustrates the basis of the validity of a rule lies in the above-mentioned rule. According Kelsen: Legality of Rule lies in the Act, and the legality of the Act lies in the Constitution.²⁰

With the foundation of Hans Kelsen's theory and the strengthening of humanistic quality understanding of professional ethical behavior, in accordance with philosophical principles, scientific discipline, and professional ethical rules. Thus the reconstruction of the value of the patient's protection on the use of X-rays in the health field to realize the safety and cure of the patient's illness and quality health services.

Theory is integrated Patient Global in providing legal protection of hospital patients on the use of x-rays in the health sector formulated in the reconstruction of some Sections of three laws include Law No. 36 Year 2009 on Health, namely Article 23, Article 29, Article 45 , Law No. 29 year 2009 on Medical Practice which changes the form of regulations, Article 1 (1), Article 4 (2) of Article 9, Article 10, Article 24, Chapter X of the criminal provisions, and Law No. 44 2009 on hospital Article 4, Article 29 and the ministerial decree namely Minister of Health Regulation No. 269 / Menkes / Per / III / 2008 concerning the Medical Record in Article 3. From the description above conclusions reconstruction of the legal protection of hospital patients on the use of X-rays in the field Health based on values of justice

Conclusion:-

The Global patient-integrated theory is formulated in legal reconstruction in the form of reconstruction of several Articles Consists of three laws and regulations covering Law Number 36 Year 2009 on Health, namely Article 23, Article 29, Article 45, Law Number 29 Year 2009 concerning Medical Practice, namely the change of regulation form, Article 1 paragraph (1) Article 4 paragraph (2) of Article 9, Article 10, Article 24, Chapter X criminal provisions, and Law Number 44 of 2009 concerning Hospitals Article 4, Article 29 Sub-Article a and Ministerial Regulation namely Minister of Health Regulation No. 269 / Menkes / Per / III / 2008 About Medical Record in Article 3. Through strong regulation for patient protection through stricter supervision to the hospital in the implementation of health service using x-ray method with the result of legal reconstruction on some related

¹⁸ Purnadi Purbacaraka, *Perihal Kaidah Hukum*, Bandung, Opset Alumni, 1979, hlm 41.

¹⁹ Atamimi,A, Hamid S, *Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara; Suatu Studi Analisis Mengenai Keputusan Presiden yang Berfungsi Pengaturan dalam Kurun Waktu Pelita I–Pelita IV*, Disertasi Ilmu Hukum Fakultas Pascasarjana Universitas Indonesia, Jakarta, 1990, hlm.287.

²⁰ Hans Kelsen, *Teori hukum murni-dasar-dasar ilmu hukum normative terjemahan The fure of teory* : Barkely University of California press :1978 : Nusa Media, Bandung, 2010.

legislation Directly to the problem of abuse of x-ray use to the patient that is on Health Act, Medical Act, Hospital Act and including Minister Regulation who deals with all forms of health services by x-ray method..

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