

The Role of Advocacy on Ethical and Legal Problems in the Hospital

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Abstract

In carrying out their duties and professions, it is possible for a health worker to experience ethical and legal problems in a hospital and have to deal with the Hospital Ethics and Legal Committee. Considering the role of legal consultants and legal advisors in providing legal advice, what is the role of both of them in ethical and legal issues experienced by Health Workers in hospitals. Therefore, this study aims to identify and analyze the role of legal consultants and legal advisors on ethical and legal issues in hospitals. The research method used is normative juridical which is carried out by examining legal principles, concepts, theories and laws and regulations. Advocates in dealing with ethical and legal issues in hospitals play a role in improving order and legal certainty within the hospital. In this case, an advocate can provide legal assistance, legal consultation, legal protection during the provision of legal aid, and other matters relating to the provision of legal assistance to clients. However, in dealing with these problems, the role of legal consultants is narrower, which is only limited to providing legal assistance and/or legal services outside the court.

Keywords

advocate; ethics; law; role; hospital



I. Introduction

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. The highest level is carried out based on the principles of non-discrimination, participation, protection, and sustainability which are very important for the formation of Indonesian human resources, increasing the nation's resilience and competitiveness, as well as national development. This is in line with Article 28 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Hospital is a health service institution for the community with its own characteristics that are influenced by the development of health science, technological advances, and the socio-economic life of the community which must continue to be able to improve services that are more qualified and affordable by the community in order to realize the highest degree of health. Illness as one of the health care facilities is part of the health resources that are indispensable in supporting the implementation of health efforts. In the implementation of health services, hospitals are based on various laws and regulations. In order to provide legal certainty and protection to improve,

Furthermore, arrangements regarding the relationship between health workers (paramedics), hospitals and patients are scattered in various laws and regulations, namely the Hospital Law, Health Law (which replaces Law Number 23 of 1992 concerning Health), and even this can be related to the Law on Health. Number 8 of 1999 concerning Consumer Protection, Law Number 25 of 2009 concerning Public Services, Law Number 11 of 2009 concerning Social Welfare, however, due to so many regulations related to this, there is often a conflict between one regulation with other regulations, which then resulted in the implementation being ineffective. The implementation of health services in hospitals has very complex characteristics and organization. Various types of health workers with their respective scientific devices interact with each other in it. Medical science and technology are developing very rapidly which must be followed by health workers in the context of providing quality services, making hospital problems more complex related to law violations and ethical violations. Based on online mass media searches, there are various ethical and legal problems that occur in hospitals, especially during the current Covid-19 pandemic, including: make the problems in hospitals more complex related to law violations and ethical violations. Based on online mass media searches, there are various ethical and legal problems that occur in hospitals, especially during the current Covid-19 pandemic, including: make the problems in hospitals more complex related to law violations and ethical violations. Based on online mass media searches, there are various ethical and legal problems that occur in hospitals, especially during the current Covid-19 pandemic, including:

Departing from the problems that occur, in order to improve the quality and reach of hospital services and regulate the rights and obligations of the community in obtaining health services, it is necessary to regulate hospitals by law. Regulations regarding hospitals are not sufficient enough to be used as a legal basis in the operation of hospitals as health service institutions for the community. The laws and regulations that have been issued also need to be socialized and enforced. In this case, the role of law enforcement, namely Judges, Prosecutors, Police, and Advocates is very influential in realizing the objectives of the legislation. Regarding the existence of advocates as law enforcers, it is regulated in Article 1 paragraph (1) of Law Number 18 of 2003 concerning Advocates, which explains that an Advocate is a person whose profession is to provide legal services, both inside and outside the court who meet the requirements based on the provisions of the law. Therefore, it is necessary to examine matters related to the role of advocates in dealing with ethical and legal issues in hospitals considering the existence of a Hospital Ethics and Legal Committee. Based on this background, the problem that will be discussed in this study is how the role of advocates on ethical and legal issues in hospitals.

II. Review of Literature

2.1 Legal Arrangements and Code of Ethics in Hospitals

Hospital is a place to take care of the sick, provide and provide health services covering various health problems. According to the guidebook for the implementation of hospital services, a hospital is all health facilities that provide inpatient, outpatient, emergency, and medical care services, which are carried out for 24 hours through individual health efforts. Hospital is a health service institution that provides complete individual health services that provide inpatient, outpatient, and emergency services. The World Health Organization (WHO) defines a hospital as a comprehensive or integral part of a social and medical organization whose function is to provide complete health services to the community, both curative and rehabilitative. Where outpatient services reach out to families and communities, and the hospital is also a center for training health workers and for bio-social research. The

hospital as an organ which was originally established based on social, humanitarian or religious purposes has experienced development in its history of growth, so that the hospital functions to bring together 2 (two) principal tasks that distinguish it from other organs that produce services. The hospital is an organ that brings together tasks based on the postulates of medical ethics because it is a place where professionals with medical oaths work who are bound by Hippocratic arguments in carrying out their duties. Besides, from a legal point of view as the basis for the hospital as an organ that is engaged in legal relations in society that is bound by legal norms and community ethical norms, the two norms are different, both in their formation and in the implementation of the consequences if they are violated.

Health law is all legal provisions that are directly related to the maintenance or service of health and its application. This means that health law is a written rule regarding the relationship between the health service provider and the community or community members. By itself the health law regulates the rights and obligations of each service provider and service recipient or the community. Health law is relatively young when compared to other laws. The development of health law only started in 1967, namely with the holding of the "World Congress on Medical Law" in Belgium in 1967. In Indonesia, the development of health law began with the formation of a study group for Medical Law FK-UI and Ciptomangunkusomo Hospital in Jakarta in 1982. This means, almost 15 years after the World Medical Law Congress convened in Belgium. This medical law study group finally in 1983 developed into the Indonesian Health Law Association (PERHUKI). At the first PERHUKI congress in Jakarta, April 14, 1987. Health law includes components or groups of health professions that are interconnected with each other, namely: Medical Law, Dentistry Law, Nursing Law, Pharmacy Law, Hospital Law, Public Health Law, Environmental Health Law, and so on.

There are several similarities between ethics and health law, among others: (1) Ethics and health law are both tools to regulate the order living in the community in the health sector; (2) The object is the same, namely the people who are sick or not sick (healthy); (3) Each regulates both parties between rights and obligations, both parties who provide health services and those who receive health services so as not to harm each other; (4) Both raise awareness to be human, good providers and recipients of health services; (5) Both ethics and health law are the result of the thoughts of experts and experience of health practitioners. While the differences between health ethics and health law, among others: (6) Health ethics only applies within the respective health professions, while the health law applies to the general public; (7) Health ethics are prepared based on the agreement of each member professions, while health law is drawn up by government agencies, both legislative (Laws, Regional Regulations), as well as by the executive (Government Regulations/PP, Presidential Decrees, Ministerial Decrees, and so on). (8) Not all health ethics are written, while health law is listed or written in detail in the law book or other state sheets. (9) Sanctions for the implementation of health ethics are in the form of guidance, usually from professional organizations, while sanctions for violating health law are "demands", which lead to criminal or punishment. (10) Violations of health ethics are resolved by the Professional Ethics Honorary Council of each professional organization, while violations of health law are resolved through the courts. (11) Settlement of ethical violations is not always accompanied by physical evidence, while for legal violations the proof requires physical evidence. Law Number 36 of 2014 concerning Health Workers, consisting of 16 Chapter which regulates General Provisions, Responsibilities and Authorities of Government and Local Government, Qualification and Grouping of Health Workers, Planning, Procurement, and Utilization,

Indonesian Health Workers Council, Registration and Licensing of Health Workers, Professional Organizations, Health Workers Indonesian Citizens Foreign Graduates Foreign Citizens and Health Workers, Rights and Obligations of Health Workers, Professional Implementation, Dispute Resolution, Guidance and Supervision, Administrative Sanctions, Criminal Provisions, Transitional Provisions, Closing Provisions.

Law Number 44 of 2009 concerning Hospitals, consists of 15 chapters that regulate General Provisions, Principles and Objectives, Duties and Functions, Responsibilities of Government and Local Government, Requirements, Types and Classification, Licensing, Obligations and Rights, Implementation, Financing, Recording and Reporting, Guidance and Supervision, Criminal Provisions, Transitional Provisions, and Closing Provisions. The Hospital Ethics and Law Committee are regulated in the Regulation of the Minister of Health Number 42 of 2018. The Ethics and Law Committee is a non-structural organizational element that assists the head or hospital director for the application of hospital ethics and hospital law. The establishment of the Ethics and Legal Committee is intended to improve patient safety and the quality of hospital services. In the event that the hospital has not been able to establish an Ethics and Legal Committee, to improve patient safety and the quality of hospital services, hospitals can strengthen the functions of hospital organizational elements. The function of the hospital organizational elements is a hospital organizational function in charge of law and/or ethics.

2.2 Law Enforcement and Code of Ethics in Hospitals

Indonesian is familiar with several terms outside of law enforcement, such as "the application of the law". But it seems that the term law enforcement is the most frequently used, thus in the future the term will be more established or is a coined term. In foreign languages we are also familiar with various terms, such as: *rechtstoepassing*, *rechtshandhaving* (Dutch); law enforcement, application (America). Law enforcement is a process to make legal wishes come true. Law enforcement is aimed at improving order and legal certainty in society. This is done, among others, by controlling the functions, duties and authorities of the institutions tasked with enforcing the law according to the proportions of their respective scopes, and are based on a good cooperation system and supports the objectives to be achieved. Hikmahanto Juwono stated that in Indonesia traditionally the legal institutions that carry out law enforcement are the police, prosecutors, judiciary and advocates. Outside these institutions, there are still the Directorate General of Customs and Excise, the Directorate General of Taxes, and the Directorate General of Immigration.

Conceptually, the essence of law enforcement lies in the activity of harmonizing the relationship of values outlined in solid rules and attitudes of action as a series of final value translations, to create, maintain and maintain peaceful social life. The conception that has a philosophical basis requires further explanation so that it will appear more concrete. Regarding law enforcement, there are three elements that must always be considered, namely justice (*gerechtigheit*), legal certainty (*rechtssicherheit*), and expediency (*zweckmassigkeit*). Justice is one of the most widely discussed legal goals throughout the history of legal philosophy. The most fundamental thing when talking about law cannot be separated from justice, the Greek goddess of justice. From Greek times to modern times, experts have disparities in the concept of justice, this is due to the conditions at that time. In this context, as explained in the introduction, it does not holistically provide a definition of justice from each expert at his time, but will be presented partially according to the writing carried out. In his book *Nichomachen Ethics*, Aristotle, as quoted by Shidarta, has written extensively about justice. He stated that justice is a virtue related to human relations. The word fair has more than one meaning. Fair can mean according to law, and what is proportional, i.e. what should

be. Here it is shown that a person is said to be unfair if that person takes more than the proper share. This is due to the conditions at that time. In this context, as explained in the introduction, it does not holistically provide a definition of justice from each expert at his time, but will be presented partially according to the writing carried out. In his book *Nichomachen Ethics*, Aristotle, as quoted by Shidarta, has written extensively about justice. He stated that justice is a virtue related to human relations. The word fair has more than one meaning. Fair can mean according to law, and what is proportional, i.e. what should be. Here it is shown that a person is said to be unfair if that person takes more than the proper share.

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III. Research Method

In this research method, the researcher describes the type of research that uses the normative juridical method with the researcher will examine the main points of the problem according to the scope and identification of the problem as mentioned above. The normative juridical research method is also called research conducted based on the main legal material by examining legal principles, concepts and theories as well as legislation. The nature of the research conducted is descriptive analytical. Analytical descriptive research is a form of research that describes and examines and explains the analysis of a legal regulation. Using a qualitative approach. According to Bogdan and Biglen in Moleong, qualitative data analysis is an effort to work with data, determine some data into manageable units, synthesize, search and find patterns, find what is important and what is learned. Sources of legal materials are obtained by means of primary, secondary, and tertiary legal sources.

IV. Result and Discussion

4.1. The Role of Advocates in Dealing with Ethical and Legal Issues in Hospitals

The definition of an advocate in language, comes from the Latin *advocare*, which means to defend (maintain), to call to ones said (call someone to say something), to vouch or to warrant (guarantee). In English, the definition of advocate is expressed by the word *advocate*, which means: to defend by argument (to defend with argument), to support (to support), indicate or recommend publicly (marking the existence or recommending in public). An advocate in English called *advocate* is a person who does this professionally in a court of law, which means a person who works as a legal expert in court. In Dutch the word *advocaat* means *procureur* which means lawyer, while in French, *avocat* means barrister or counsel.

Profession is essentially a permanent job in the form of service work carried out by mastering and applying knowledge in certain fields of knowledge whose development is lived as a calling for life and its implementation is bound by certain values based on the spirit of devotion to fellow human beings for the public interest and rooted in respect and efforts to uphold human dignity. The term attorney, lawyer is even often called a defender who represents or assists parties seeking justice. In Arabic, lawyers are called *mahami*. This word is a derivation of the word *hima*, which is a defense made by someone or the protection of a lawyer against his client in front of a court.

According to Black's Law Dictionary, the definition of an advocate is to speak in favor of or defend by argument (speaking for the benefit of or defending with an argument for someone), while a person who works as an advocate is one who assists, defends, or pleads for another. Who renders legal advice and aid, plead the cause of another before a court or a tribunal, a counselor, a consultant). In the legal dictionary, the definition of an advocate is defined as a defender, a person (legal expert) whose job is to propose and defend cases inside or outside the court. Meanwhile, according to Law no. 18 of 2003, Article 1 paragraph (1) explains that an advocate is a person whose profession is to provide legal services, both inside and outside the court, who meet the requirements based on this law. Legal services as referred to are services provided by advocates in the form of providing legal consultation, legal assistance, exercising power of attorney, representing, accompanying, accompanying, taking other legal actions.

Regarding ethical and legal issues at the hospital, a health worker who does not have the ability and understanding of the law can ask for help from an advocate who can act as a legal consultant and legal advisor. Legal consultants and legal advisors have different meanings. Legal consultants are those who are appointed by the minister of justice to provide legal consultation outside the court as their main source of livelihood. Legal Consultant is a legal consultant is an independent party who is trusted because of his expertise and integrity to provide an independent legal opinion regarding emissions and issuers/other parties related to capital market activities. Legal Consultant can also be defined as a person whose job is to provide advice and/or carry out non-litigation duties.

The rights of legal consultants to clients as stated in Article 9 of Law Number 16 of 2011 concerning Legal Aid, legal consultants have the right to provide legal aid services, legal consultations, legal protection during the provision of legal aid, and other matters relating to the provision of assistance client law. The obligations of legal consultants to clients as stated in Article 10 of Law Number 16 of 2011 concerning Legal Aid, namely legal consultants are required to maintain the confidentiality of the client's data and provide information related to the case that is being experienced by the client concerned. Literally being a legal consultant is required to have a sharp analysis of legal issues and conduct

research on legal methods. So, it is highly demanded to master the substance of the law. A legal consultant is likened to a client's legal partner and partner who must know the client's legal journey. Usually a legal consultant is needed by every corporation. Furthermore, Article 1 point 13 of the Criminal Procedure Code provides the understanding that a legal advisor is a person who meets the requirements determined by or based on the law to provide legal assistance. Law Number 13 of 1965 concerning the Supreme Court, replaced by Law Number 14 of 1985, in Article 54 that legal advisors are those who carry out activities to provide legal advice related to the court. Article 36 and 37 of the Law on the Basic Provisions of Judicial Powers contain the term legal advisor who is obliged to provide advice to help facilitate the settlement of cases by upholding Pancasila, law and justice. Usually a legal consultant is needed by every corporation.

Joint Decree of the Chief Justice of the Supreme Court and the Minister of Justice of the Republic of Indonesia Number: KMA/05/SKB/VII/1987; Number: M.03-PR.08.05 of 1987 concerning Procedures for Supervision, Enforcement and Self-Defense of Legal Counsel defines Legal Counsel as those who provide legal assistance or advice, either by joining or not in an association of Legal Counsel, either as a livelihood or as a source of income. no, the so-called Lawyers/Advocates and Practice Lawyers. And a legal advisor is a person who meets the requirements determined by or based on the law to provide legal assistance (Article 1 paragraph [13] of Law No. 8 of 1981 concerning the Criminal Procedure Code of the Criminal Procedure Code).

So that in the past, legal advisors were divided into two, namely: (1) Advocates who had been appointed by the Minister of Justice and obtained permission to practice legal activities anywhere. (2) The practicing lawyers who have obtained permission from the Head of the High Court to practice law in the jurisdiction of the High Court concerned. There are several rights of legal advisors regulated in the Criminal Procedure Code, namely:

- a. Legal advisors have the right to contact suspects from the moment they are arrested or detained at all levels of examination according to the procedure determined by law (Article 60), however this right is limited by the provisions of Article 20 PP No. 27/1983, which stipulates that a visit permit for advisors law, family and others are given by the official who is legally responsible for the detainee, according to the level of examination and will be limited to visits that can only be made every working hour.
- b. Legal advisors have the right to visit and talk to suspects at every level of examination and at any time for the purpose of defending their case (Article 70 paragraph (1). Article 70 paragraph (1) of the Criminal Procedure Code is also limited to only during working hours, or at certain hours and days during a certain time.
- c. Legal advisors have the right to receive a derivative of the examination report (Article 72).
- d. Legal advisors have the right to send and receive letters from suspects at any time desired by him (Article 73).
- e. Legal advisors can follow the course of the examination by looking but unable to hear the suspect's examination (Article 115 paragraph (1)).

There are several obligations of legal advisors in carrying out their duties including, first, loyalty to the community (public service). This obligation has a consequence that an advocate must be an honest and capable person, likes to help the poor (legal aid), does not look for cases, does not help illegal legal practices. Second, loyalty to the judiciary, in this case advocates must respect judicial officials such as police, prosecutors, judges and the judiciary itself. Not bribing/influencing the officer of court, including not talking too much to the press to avoid trial by the press. Third, loyalty to clients, namely people who seek legal

protection (not just asking for help) from lawyers. Therefore, advocates must protect including the honor of the client. Fourth,

Furthermore, it relates to the role of legal consultants and legal advisors in civil cases, based on the legal basis of Article 123 of the RIB (Renewed Indonesian Regulation) which provides the possibility for litigants to be represented by other people who are authorized by letter, with a mandatory defense system in the RV (Reglement). op de Rechtsvordering) which with the obligation to represent in disputes to advocates and prosecutors both in front of Raad VanJustitie, the position of legal advisors in civil cases is as follows: (1) Representing and assisting in the court process, namely preparing all work until the judge's decision is pronounced, it is called a procurator. The procura approach (latin), (2) In addition, legal advisors provide legal advice to litigation parties, this is referred to as legal adviser (UK), juridical advirteur (Dutch) which means as a legal advisor. In the court of first instance, the appeal or cassation provided for in the RV, the para a party must be represented by an advocate with a witness if one of the parties does not appoint an advocate as his proxy, that party will be sentenced to a verstek decision even though the party itself is present at the trial concerned. In this case, the advocate can act as a legal representative representing the legal interests of the hospital in resolving legal issues both in court and out of court.

Apart from civil cases, there are also criminal cases. With a legal basis, since he was arrested or detained at all levels of examination, and legal counsel has the right to contact and talk to the suspect at any level of examination at any time for the benefit of his case defense. Even the conversation was carried out without being heard by the officials concerned, except in certain crimes. The role of legal advisors in handling criminal cases against hospital leaders who are affected by criminal law problems is the same as the role of advocates to the community in general which are regulated by laws and regulations, namely: being passive means that the presence of legal advisors can only listen and see the examination (Article 115 paragraph (1) of the Criminal Procedure Code). In practice, the suspect faces juridical difficulties, he is allowed to consult with his legal advisor, so that the advisory assistance at the investigation level is beneficial to the interests of the suspect. The position of the legal advisor in this case is as a juridical adviseur, or legal adviser which means as a legal advisor. (2) In examining a suspect before a trial, legal counsel during the examination of a defendant is active, meaning that the presence of a legal advisor can use his rights as possessed by judges and prosecutors, namely the right to ask and answer questions, the right to submit evidence, both facilitating witnesses, and letters and other evidence, the right to say a defense (pledoi).

Advocates as Legal Consultants and Legal Advisors in dealing with ethical and legal issues in hospitals play a role in improving order and legal certainty within the hospital. In this case, Legal Consultants and/or Legal Advisors can provide legal assistance, legal consultation, legal protection during the provision of legal aid, and other matters related to providing legal assistance to clients. However, in dealing with these problems, the role of legal consultants is narrower, which is only limited to providing legal assistance and/or legal services outside the court.

V. Conclusion

The birth of Law no. 36 of 2009 concerning Health is the basis for providing guarantees for health services. For this reason, the government and local governments have the responsibility to provide hospitals. Hospitals as health care facilities have a very important role in the world of health so that health workers in carrying out their professions must be based on existing ethics and rules. If these ethics and laws are violated, there will be legal sanctions and ethical sanctions obtained by the Health Workers. In terms of law enforcement on ethics and law in hospitals, a Hospital Ethics and Law Committee must be formed based on Minister of Health Regulation No. 42 of 2018. In terms of law enforcement, there are 3 (three) elements that must be met, namely justice, legal certainty and expediency. It is possible that when carrying out their profession, Health Workers will experience ethical and legal problems. If the health worker does not have the ability to understand the problems he faces, he can ask for help from an advocate who acts as a legal consultant and legal advisor. What is meant by legal consultants are those who are appointed by the minister of justice to provide legal consultation outside the court as their main source of livelihood, while legal advisors are persons who meet the requirements determined by or based on law to provide legal assistance. Legal Consultants and Legal Advisors have a role to solve medical problems in civil and criminal cases and even administration. However, in dealing with these problems, the role of legal consultants is narrower, which is only limited to providing legal assistance and/or legal services outside the court and other matters relating to the provision of legal assistance to clients. However, in dealing with these problems, the role of legal consultants is narrower, which is only limited to providing legal assistance and/or legal services outside the court.

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