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Hospital Responsibility for Negligence of Medical Personnel to Patients

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Abstract

This legal research aims to find out how the hospital's legal responsibility for the negligence of medical personnel in carrying out medical actions against patients in hospitals. This research is a prescriptive normative legal research. The approach used in this research is the statute approach. The types of legal materials used in this study are primary and secondary legal materials. The method of collecting legal materials used in this research is through a literature study and then analyzed by the method of deduction, analysis to draw conclusions from general things to specific things. legal relationship between medical personnel and hospitals according to several relevant laws and regulations, namely Law Number 29 of 2004 concerning Medical Practices, Law Number 44 of 2009 concerning Hospitals, Law Number 36 of 2014 concerning Health Workers, Law Number 13 of 2003 concerning Employment, and the Hospital Code of Ethics, it can be concluded that the relationship between hospitals and medical personnel is based on the existence of an employment relationship. The working relationship between medical personnel and hospitals determines the hospital can be responsible. Hospitals are responsible for acts of negligence of medical personnel that cause harm to patients can be determined based on Article 1367 of the Civil Code, and Article 46 of Law Number 44 of 2009 concerning Hospitals, which states that hospitals are responsible for acts of negligence committed by medical personnel.

Keywords
hospital responsibilities; negligence; medical personnel and patients

I. Introduction

Advances in information technology and the relatively high level of public education are in line with the increasing interest of the community in dealing with the dynamics of life which is included in the dynamics of public services in the medical field. There is a lot of news about community demands and legal demands from health workers to provide health services, including doctors, nurses and hospitals.

On the other hand, health workers, especially doctors, in their professional work are sometimes suspicious of their claims when the patients they treat fail to recover or die due to failure of treatment or medical action. Every community has the right to access health services, including the choice of location and type of health service, as stated in Article 28H(1) of the 1945 Constitution which states that "everyone has the right to live physically and mentally. With a healthy environment, the right to health services, doctors who practice their profession and those who receive health services have the same status in accessing legal protection, even now with a patient-centered paradigm shift.

According to Article 1 Number 6 of Law. Minister of Health Regulation Number 36 of 2009 concerning Health. What is given to the community is something of value by health workers who are reliable and competent in their respective fields. Health workers

must meet professional standards and respect patients in carrying out their duties. Health workers in question are medical personnel. Because medical personnel are under Law no. 3. 36 of 2014 concerning health workers. Medical personnel in the health sector not only treat patients but also participate as hospital officials or employees. Medical personnel require informed consent when performing medical procedures on patients. If the patient agrees with the informed consent, then the patient and medical personnel carry out the agreement.

In the provision of medical services to patients, between medical personnel and patients a legal bond arises caused by the binding of the two parties in an agreement called a therapeutic agreement. Therapeutic agreements are agreements between medical personnel and patients, in the form of legal bonds that give birth to rights and obligations for both parties. The regulation regarding medical personnel is regulated in Article 8 of Law Number. 36 of 2014 concerning Health Workers (hereinafter referred to as the Health Manpower Act) explains that health workers consist of health workers and assistant health workers. Medical personnel are listed as health workers in accordance with Article 11 paragraph (1) letter a of the Health Personnel Law.

Article 11 paragraph (2) of the Health Manpower Act explains that. "The types of Health Workers listed in the group of medical personnel as defined in paragraph (1) letter a consist of doctors, specialist doctors, and specialist dentists. Medical personnel sometimes make mistakes in providing health services to patients. This medical personnel error can occur due to lack of knowledge, lack of experience and interpretation and ignoring something that should not be done. If the error is planned or because of the doctor's negligence, the patient can ask for responsibility (responsibility) from the medical personnel concerned. The responsibility of these medical personnel can be in the form of liability, criminal, and administrative. An omission made by medical personnel in using their skills and knowledge to treat patients is referred to as an act of malpractice.

Negligence is defined as careless behavior where the actions taken by medical personnel are below the standard of medical services. The hospital as a business entity organization in the health sector has an important role in realizing the maximum degree of public health. Therefore, hospitals are required to be able to manage their activities, by prioritizing the responsibilities of professionals in the health sector, especially medical personnel in carrying out their duties and authorities. Not always medical services provided by health workers in hospitals can provide results as expected by all parties. There are times when these services occur due to the negligence of medical personnel which causes havoc, such as disability, paralysis, or even death. The requirement that the hospital is responsible for the patient's loss due to the negligence of this medical personnel can have further implications for the hospital, medical personnel and for the patient. Hospitals need to know the forms of negligence of medical personnel who are the responsibility of the hospital as well as forms of negligence of medical personnel that are not included in the responsibility of the hospital. Hospitals do not only have legal ties to medical personnel, they also have legal ties to the community as patients.

The legal relationship between the hospital and the patient is that the hospital offers health service efforts by providing facilities, infrastructure and health resources, on the other hand, for patients who need treatment, they can get it at the hospital. Hospital service standards are related to the expertise of hospitals in providing health services in accordance with their qualifications. Consequences for the patient's illness with suffering or disease listed in its qualification competence, it is mandatory for the hospital to provide the best possible health service in accordance with the patient's rights. If the patient's illness is outside the hospital's expertise to deal with it, it is mandatory for the hospital to refer him

to a hospital that has the facilities and infrastructure needed according to the needs based on the patient's illness.

In the development of medical treatment, it turns out that various factors also influence so that the relationship between doctor and patient becomes increasingly impersonal. Besides, medical science is not an exact science. The activity of diagnosis (determination of the type of disease) is an art in itself because it requires imagination and listening to the complaints submitted by patients and requires careful observation of them, so the results are uncertain. Therefore, such factors should be considered in examining, adjudicating medical cases in medical action.

Advances in science and technology in the fields of law, medicine, and informatics have resulted in appropriate changes in all aspects of the doctor-patient relationship. This change is also influenced by the increasing awareness of the law in the community (patients), which is one of the tangible results of development. According to J. Guwandi, negligence includes malpractice, but in a broad sense, malpractice does not always contain an element of negligence. Malpractice has a broader meaning because in addition to including negligence it also includes acts that are done intentionally (dolus) and violate the law. If the negligence reaches a certain level so as to harm or injure people, especially to the point of causing the death of a person, it is categorized as gross negligence (culpa lata or gross negligence).

Currently, medical procedures have been organized in a corporate organization, namely a hospital. Charity health services have shifted their orientation to the industrialization of medical services. Capital support is an important factor in renewing medical equipment and increasing health workforce resources in hospitals. The position of medical service provider is not carried out by a doctor but has been taken over by a hospital legal entity, namely a corporation. Therefore, criminal liability for medical negligence is also more complex. The complexity of criminal liability must be seen from the patient's relationship, not only with doctors but also with corporations.

In accountability, the hospital is fully responsible for all activities carried out by both medical and paramedical personnel. The burden of responsibility given to the head of the hospital and the director of the hospital who have received delegation of authority from the owner of the hospital to carry out all activities related to health services. The liability received by the hospital can also come from the negligence factor of medical personnel. The form of hospital liability in a civil manner is in the form of compensation as defined in Article 1243 of the Civil Code. On the other hand, the administrative responsibility charged to the hospital can be in the form of a warning letter and the revocation of the hospital's establishment permit.

Based on the description above, the authors are interested in conducting research on "Hospital Responsibilities for the Negligence of Medical Personnel against Patients". The purpose of this study was to analyze the characteristics of medical negligence acts in hospitals.

II. Review of Literature

According to the Regulation of the Minister of Health of the Republic of Indonesia No.159b/MenKes/II/1988 concerning Hospitals, it is stated that: "Hospitals are health facilities that carry out health service activities and can be used for education of health workers and research". In addition, hospitals are capital-intensive, labor-intensive, expert-intensive, technology-intensive institutions, and the problems they face. According to Astuti et al (2019) Education is an obligation of every human being that must be pursued to

hold responsibilities and try to produce progress in knowledge and experience for the lives of every individual.

According to Rowland, the hospital is the most complex and most effective health system in the world. The hospital as a health facility that provides health services to the community and has a very strategic role in accelerating the improvement of public health status. Therefore, hospitals are required to provide quality services in accordance with established standards and can reach all levels of society. Article 2 of the Hospital Law states that hospitals are run based on Pancasila and are based on human values, ethics, professionalism, benefits, justice, equal rights and anti-discrimination, equity, patient protection and safety, and have social functions. The social function of this hospital is part of the responsibility attached to every hospital that is bound by the moral and ethical ties of the hospital in helping patients, especially those who are less or unable to meet the need for health services.

The social function means that the hospital strives to provide services in the health sector that are evenly distributed so that it can be felt by the whole community without discriminating on their social status. The social function of the hospital, in general, serves regardless of any aspect of the patient concerned. Affluent patients, “gray” patients (between economically well-off and economically disadvantaged), and economically disadvantaged patients should be able to receive health services to which they are entitled.

The purpose of operating a hospital is formulated in Article 3 of Law Number 44 of 2009 concerning Hospitals (hereinafter referred to as the Hospital Law) which states that: the regulation of hospital administration aims to facilitate public access to health services, provide protection for patient safety, community, hospital environment and human resources in hospitals, improve quality and maintain hospital service standards and provide legal certainty to patients, communities, human resources and hospitals. Thus, the establishment of a hospital has a purpose to serve the community for health service needs.

III. Research Method

The method used by the author is the library method, which is juridical normative. Legal research is carried out to produce new arguments, theories or concepts as prescriptions in solving problems faced by the nature of descriptive research. In legal research there are several approaches. "There are 5 approaches in normative law research, namely:

a. Legal approach (statute approach)
b. Conceptual approach (conceptual approach)
c. Case approach
d. Historical approach (historical approach)
e. Comparative approach

In this study, the researcher used a statute approach and a conceptual approach. The statutory approach is an approach used to study and analyze all laws and regulations related to legal issues, while the conceptual approach is an approach used to study and analyze these legal issues based on legal theory, legal concepts and the opinions of experts related to the legal issue.

IV. Results and Discussion

4.1 Responsibilities of Hospitals and Management

Article 33 of the Hospital Law regulates the minimum requirements for the organizational structure of a hospital consisting of the Head or Director of the Hospital, elements of medical services, elements of nursing, medical support elements, medical committees, internal examination units, general administration and finance.

Article 34 regulates several restrictions related to the organizational structure of the hospital. In paragraph (1) it is formulated "Head of the hospital must be a medical worker who has the ability and expertise in the field of hospitalization". This provision can be interpreted as a form of limitation on the organization of a hospital that has the function to perform medical services and has special characteristics that require special managerial abilities as well. As for the explanation in paragraph (3), what is meant by hospital owners are, among others, company commissioners, foundation founders, or the government.

Health workers, including doctors who are integrated in hospitals, are required to provide medical services. Medical service efforts carried out by doctors in hospitals are principally due to an employment relationship based on a contract. By contract, medical personnel become members of the hospital staff.

However, with the advancement of science, especially in the field of medicine and with the increasing number of specializations of doctors, it is possible for doctors who are not medical staff of the hospital concerned to make efforts to provide medical services at the hospital. Therefore, doctors who provide medical services at hospitals can be divided into two, namely doctors who are employees (employees) and visiting doctors (independent contractors).

Doctors who are members of the hospital staff in carrying out or carrying out their duties in the hospital must obey the hospital's orders. Besides that, they are also in carrying out their duties at the hospital on behalf of the hospital. The employment contract between a hospital and a doctor to perform medical services at a hospital is an agreement to perform services (Article 1601 of the Civil Code). In the sense that one party wants from the other party to perform a service. In this case, the hospital requires doctors to provide medical services. In accordance with Permenkes Number 755/MENKES/PER/IV/2011 Article 3 paragraph (1) To realize good clinical governance as referred to in Article 2, all medical services performed by each medical staff in the hospital are carried out on assignment. clinical head/hospital director. Paragraph (2) The clinical assignment as referred to in paragraph (1) is in the form of granting clinical authority (clinical privilege) by the head or director of the hospital through the issuance of a clinical appointment letter to the medical staff concerned.

From the description above, the authors describe that there are 3 (three) groups that run the organization of the hospital, namely the owner, management and implementer of medical actions. Each of these groups has legal rights and obligations, giving rise to legal responsibilities in accordance with the rights and obligations that must be carried out. This legal responsibility concerns administrative, civil and criminal matters.

It is important to know that the nature of punishment is personal. Therefore, it is necessary to put forward various opinions of criminal law experts, which among other things state that a person is said to have committed a crime at least there must be three elements, namely first, there is a violation of written law; second, the act is against the law; Third, the act has an element of error in the form of intentional and negligence (culpa, negligence).

It should be noted that based on the Constitutional Court's decision on the refusal of judicial review of Article 66 of Law 29/2004, in relation to violations committed by doctors or dentists against professional ethics, professional discipline, and legal norms, Law 29/2004 classifies or categorizes and regulates complaint flow is as follows:

a. Violations by a doctor or dentist may take the form of: a violation of ethics, a violation of professional discipline, and or a violation of the law;
b. Complaints against violations of professional discipline are examined and decided by MKDKI;
c. Complaints against violations of the professional code of ethics are forwarded by MKDKI to professional organizations;
d. Violations of criminal law norms can be reported to the police or the prosecutor's office;
e. Violations of civil law norms can be sued in court.

The inclusion of professional ethics and professional discipline into the law, according to the Court, must be understood that the legislators emphasize the importance of professional ethics and professional discipline to be applied as guidelines for the behavior of doctors or dentists. What must be underlined is that although professional ethics and professional discipline are regulated or contained in a law, they are not necessary.

4.2 Proof of Unlawful Nature and Forms of Medical Error

Illegal nature is the main element of a criminal act, in the process of realizing an act as a crime it is often illegal. Every form of crime is always illegal, even though the form of crime does not explicitly contain illegal elements, but every form of crime is always illegal.

According to Hazewinkel-Suringa, breaking the law is not an absolute requirement for a crime, but only an absolute condition for a crime if the law clearly stipulates it in the composition of the crime. The unlawful nature of the crime is not clearly stated in its composition, but is only a sign of the crime.

A law that does not explicitly mention "against the law" in its formulation because the act basically violates the law according to criminal law. In criminal law, this offense is known as a secret offense. Every act against the law and every consequence that is judged to be against the law must be recognized by law as the embodiment of the principle of legality. This principle in relation to the nature of the offense is the satisfaction of all elements in the formulation of a criminal act, which leads to the perpetrators of their actions. The fulfillment of all elements which constitute a criminal act is invalid. If the violation is a law, it is called a formal law violation, and if the violation is based on public judgment, a violation of etiquette or value is called a material error.

Limiting the nature of the violation with formal law is the principle of legality. The exception is the nature of the violation of material law in its negative effect, namely even though an act has completed all forms of crime, according to the community's assessment it does not violate the law. Violating the legal nature of this material keeps its creators from being punished.

In general, criminal law experts are of the opinion that the unlawful nature that is clearly stated in the criminal formulation must be proven by the public prosecutor. If the crime was committed without clearly showing the nature of the offense, the public prosecutor does not need to prove it. The consequences of not needing to prove the unlawful nature of the formulation of a crime that is not explicitly stated in the formulation of a crime because the act is basically against the law. In accordance with the principle of proving criminal law that what is proven is positive things not negative things (negative

non-sunt probanda). If the public prosecutor proves that it is negative, it will have difficulty because it has to prove that there is no justification, for example noodweer (forced defense) or position orders and others. This principle is excluded if the maker can prove otherwise that the act committed is not against the law, even though there is no obligation for the maker to prove he did not commit an act that is against the law. During the trial, it is the right time for the maker to prove that the act he did was not against the law or justified by law as a justification.

The definition of an unlawful act as stated by J.B. vn Bemmelen:

a. Contrary to proper scrutiny in public relations regarding other people or goods;
b. Contrary to obligations stipulated by law;
c. Without own right or authority;
d. Contrary to the rights of others;
e. Contrary to objective law.

The teaching of being against the law from the perspective of criminal law in Indonesia adheres to a material view, as in Moeljatno's opinion. "That it is impossible other than following material teachings or theories. Because for Indonesians there has never been a time when laws and regulations were seen as the same. The thought that the law is the law we have never encountered. On the contrary, almost all original Indonesian laws are unwritten laws.

4.3 Justification and Proof of Errors in Medical Actions against Patients

Not all acts that meet all the elements of a criminal act the perpetrator can be punished, but the judge can give an acquittal or an acquittal decision. The possibility of a judge granting an acquittal to the perpetrator for a criminal act that has been committed is part of the principle in the criminal system that applies in Indonesia. The law accepts certain circumstances that allow a criminal to be held accountable or not to be punished for any crime. Thus, the actions of a person who has fulfilled certain conditions allow the provisions of criminal law to not be enforced, both the provisions contained in the Criminal Code and other laws and regulations outside the Criminal Code.

The discussion regarding the inability to apply the provisions of criminal law to perpetrators of criminal acts is closely related to two things, as follows:

a. The grounds that exclude prosecution (vervolgingsuitsluitingsgronden) are certain things or circumstances which become reasons for the public prosecutor to be unable to prosecute a person accused of committing a crime.
b. The grounds that negate punishment (strafuitsluitingsgronden) are certain things that become reasons for judges not being able to impose a crime against someone who has been accused of committing a crime or in the science of criminal law it is called fait d'exuses things that forgive the perpetrator of a crime so that he is not punished).

People who are covered by Strafuitsluitingsgronden are those who meet certain conditions so that the provisions of criminal law cannot be applied to them, if they commit a crime. That's why in the doctrine known the terms justification reason, excuse excuse and excuse to remove guilt.

V. Conclusion

Hospitals that employ medical personnel and nurses as service employees, even though they have met the Standard Operating Procedures (SOP) and/or good medical service standards, are often negligent in carrying out their duties. Various omissions such as non-fulfillment of the conditions stipulated in Article 1320 of the Civil Code for both doctors and patients have resulted in default or doctors in medical services have carried out standard medical procedures, but the hospital system error will still have a negative impact and cause harm to the patient. Medical personnel, in this case, who are guilty of negligence in carrying out the elements of negligence, can also be held accountable by subordinate doctors and the employer's hospital.

Both government and private hospitals can be held responsible for medical actions of doctors who have met the element of negligence, and for hospital management such as damage to medical devices and inadequate preparation when doctors use medical devices in medical services. The law and the support of several theories give the patient the right to sue the hospital civilly for breach of contract or unlawful acts in the form of material compensation for injured patients. Such a lawsuit is possible as long as the medical staff's negligence causes the patient's physical disability or even death. However, the acceptance of the lawsuit depends on the evidence submitted by the parties and the judge's assessment of the results of the evidence.

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