

Legal Study Of Hospital Liability On The Loss Of Patient Due To Medical Negligence In Informed Consent Cases

Junaidi

adv_junaish@yahoo.co.id

Abstract

This legal analysis aims to find out hospital liability for medical actions that cause harm to therapeutic patient. This prescriptive normative legal research employs statute approach. Primary and secondary legal materials collected through literature study are analysed using deduction technique, analysis to draw conclusions from general to specific things. Employment relationship between hospital and its medical personnel is based on laws and regulations as follows: Law Number 29 of 2004 on Medical Practice, Law Number 44/ 2009 on Hospital, Law Number 36 of 2014 on Healthcare Worker, Law Number 13 of 2003 on Manpower, and Hospital Code of Conduct. Employment relationship between hospital and its medical personnel determines hospital's liability. Hospital is in charge of negligent treatment of medical personnel that cause harm to patient as mentioned in Article 1367 of Indonesian Civil Code and Article 46 of Law Number 44 of 2009 on Hospital.

Keywords: *Hospital Liability, Negligence, Medical Personnel, Legal Review*

A. BACKGROUND OF STUDY

In health sector, medical personnel stand not only as patient's healer but also as hospital's employee. Prior to medical treatment, patients is required to be informed consent. Only after consent is delivered and agreed, medical staff then is allowed to suggest therapeutic treatment. Therapeutic agreement binds medical staff and patient in a legal relationship. The agreement comes with rights and obligations for both parties. However compared to general agreement, the object of medical informed consent is different. In a therapeutic agreement, the object is treatment/ therapy applied to cure the patient. Therefore, it determines the most appropriate therapy for patient to be carried out by doctor.¹

Health professional is regulated in Article 8 of Law Number 36/ 2014 on Health Workers (hereinafter referred to as the Health Manpower Act) which states that personnel in this sector consist of healthcare worker and healthcare assistant. Medical personnel belongs to healthcare workers in accordance with Article 11 paragraph (1) letter (a) of the Health Manpower Act. Article 11 paragraph (2) of the act states that, "Types of Healthcare Worker included in the group of medical personnel as referred to in paragraph (1) letter (a) are doctors, specialty doctors and specialty dentists." Medical personnel sometimes make mistakes in providing health services to patients due to lack of knowledge and experience or fail to properly care for his patient.²

When medical practitioner consciously make mistake or displays negligence, patient has a right file medical negligence claim. The accountability of a medical personnel can be in the form of liability report, administrative sanction, to crime offense sanction. Negligence act or omission of a healthcare worker, which

1. Bader Johan Nasution, *Hukum Kesehatan dan Pertanggungjawaban Dokter*. Jakarta: PT. Rineka Cipta, 2005, page 11.

2. *Ibid*, page 14.

leads to injury to a patient is considered malpractice.³ It signifies careless attitude and violation of ethical standard.

Hospital as a business entity in health sector plays an important role in promoting public health. Therefore, hospital is required to be able to manage its medical activities, by prioritizing the responsibilities of healthcare professional, especially medical and nursing personnel. Medical services provided by healthcare workers does not always meet patient's expectation. In some cases, medical negligence may cause misfortune, such as physical impairment or paralysis on patient, and even death. Provisions regarding hospital's responsibility for patient losses due to medical negligence have further implications on the business entity itself, healthcare worker and patient. Therefore, hospital needs to ensure which forms of medical negligence to be accounted for and which are not.

In terms of liability, hospital takes full responsibility of all activities carried out by both its medical personnel and paramedics. Hospital director or chief executive officer bear the burden of such responsibility. Adverse effect due to negligence of its medical personnel is also included in hospital liability. Civil accountability is in the form of compensation as referred to in Article 1243 of Indonesian Civil Code. Hospital may also be subject to administrative sanction in the form of warning letter or even permit revocation. Based on the description above, the author decides to conduct research on "Legal Study of Hospital Liability on the Loss of Patient Due to Medical Negligence in Informed Consent Cases."

B. RESEARCH PROBLEM

This article addresses the implementation of hospital liability in terms of compensation given to patient for losses suffered due to medical personnel's negligence in informed consent cases.

C. RESEARCH METHODS

The author implements normative legal method on this literature study. Legal research is carried out to generate new arguments, theories or concepts as prescriptions in solving presented problem. Since this writing describes the characteristics of a circumstance, it falls under descriptive research.

D. DISCUSSION

There are two kinds of legal relationship between medical personnel and hospital, i.e.:

a. Employment Relationship

Employment relationship puts doctors as employees who perform work or service, and hospital as employer. This type of legal link is referred to as the "doctor in" of the hospital. Doctors as hospital employees must comply with all regulations on employment. Both agree to reciprocal obligations, apart from those regulated in the Health Manpower Act and the Civil Code.

b. Agreement-based Relationship

Agreement-based relationship assigns doctor not as hospital employee. However, doctors are allowed to use hospital facilities, include in hospitalization rooms and out-patient care clinic to provide healthcare service. Agreement-based is also stipulated in the Civil Code.

Legal relationship between doctor and hospital develops into three kinds of pattern, i.e.:

a. Doctor as employee

3. Agus Budiando and Gwendolyn Ingrid Utama, *Aspek Jasa Pelayanan Kesehatan Dalam Perspektif Perlindungan Pasien*, Bandung: Karya Putra Darwati, 2010, page 129.

Being hospital employee, doctor has a set schedule and working hours. He, who is bound by hospital regulations, performs medical care and service during specified office hours for and on behalf of the hospital. He works under the supervision of hospital managing director. This general assumption is likely true because doctors usually work as hospital employees, although they are not ordinary employee. It is because doctor owns professional autonomy namely clinical work freedom.

b. Doctor as attending physician

According this pattern, doctor and hospital management have an equal standing. Doctor is required to present accomplishment or reach achievement, while hospital provides supporting facilities such as lodging, food and basic needs, nurses/ midwives as well as other medical and non-medical facilities.

c. Doctor as independent contractor

Self-employed doctor works independently, not for and on behalf of the hospital. In carrying out his work, he is not bound by hospital rules, policies, or service hours. Independent contractor works freely without hospital supervision. He can directly charge patients and set or negotiate his own pricings. This pattern legally positions independent contractor parallel to the hospital. Although he is bound by working agreement with the hospital, he himself is accountable for medical service given.

Each of these working patterns determine whether the hospital is responsible or not for the losses caused by medical negligence and borne responsibility.

a. Legal Relationship between Medical Personnel and Hospital According to Law Number 29 of 2004 on Medical Practice

Law Number 29 of 2004 on Medical Practice does not clearly regulate legal relationship between medical personnel and hospital. However, Article 41 and Article 42 mention that hospital provides healthcare facility for doctors to administer health service. There is a working pattern between medical personnel and hospital, in which doctors are medical workers who are paid to practice healthcare services. In other words, medical personnel are complementary partners of hospital as a health care institution. As for doctors, they need hospital to carry out medical practices.

b. Legal Relationship between Medical Personnel and Hospital According to Law Number 44 of 2009 on Hospital

Legal relationship between medical personnel and hospital is also regulated in Law Number 44 of 2009 on Hospital. It is implicitly explained in Article 7 paragraph (1) and Article 12 paragraph (1), (2), and (3) that hospital needs healthcare workers as human resources to run provide medical services. Hospital workers consist of medical, medical support, nursing, and pharmaceutical personnel. In addition, non-medical (management) personnel are needed to run

healthcare services. Medical workers need to have (and regularly extend) practice license in accordance with the provisions of laws and regulations. Article 13 paragraph (1) mentions that, “Medical personnel working at hospital are required to have a Practice License in accordance with statutory regulations.” While hospital provides facilities and organizes infrastructure for healthcare services.

c. Legal Relationship between Medical Personnel and Hospital According to Law Number 36 of 2014 on Health Workers

The Health Act does not explicitly define hospital. Yet Article 26 paragraph (1) of the Health Workers Law mentions that, “Health Workers assigned to Health Facilities are obliged to carry out tasks in accordance to his competence and authority.” Article 26 paragraph (2) of the law adds that, “Head of Health Facilities as referred to in paragraph (1) and/or regional heads in charge of Health Facilities must consider the fulfilment of basic needs of medical personnel, such as: clothing, food, shelter, and location as well as ensure work safety and security for Health Workers in accordance with the provisions of laws and regulations.”

Basically, a doctor and his patient are tied to *inspannings verbitenis* agreement or effort engagement. Based on this concept, a doctor is obliged to carry out health services sincerely, dedicating his ability and attention in accordance to professional standards. Deviation from medical procedure means breaking the agreement, as regulated in Articles 1236 and 1239 of the Civil Code. If a patient and his family witness that his doctor has denied his contractual obligations, then the patient may file medical negligence claim. The issue of hospital liability in paying compensation for losses suffered by patients due to negligence of medical personnel in Informed Consent cases, is discussed as follow.

a. Medical Malpractice and Negligence in Informed Consent Cases

Malpractice in general means objectively inappropriate action. According to Hoekema in Bahder Johan Nasution, malpractice in health services is “...acted below the standard of what be expected on an average in reasonbleness of a follow professional in similar circumstances and places.” Meanwhile, negligence according to Bost vs Rilley at Hammon and Caltamba Memorial Hospital means, “the lack of ordinary care. It is the failure to do what a reasonable careful and prudent person would have done or the doing of something which a reasonably person would not have done the occasion in question.” Thus, negligence has two meaning; first is “doing something that should not have been done,” and second is “did not perform something that should have been done.”⁴

b. Hospital Liability for Medical Treatment

Below are parameters to determine the extent to which hospital is responsible for negligent acts of medical personnel.

1) Therapeutic Relationship Pattern

Under this pattern, health care unit acts as the party rewarding doctor’s achievement.

4. Endang Kusuma Astuti, *Transaksi Terapeutik dalam Upaya Pelayanan Medis dalam Rumah Sakit*. Bandung: PT. Citra Aditya Bhakti, 2009, page 191.

Meanwhile, doctor functions as employee (sub-ordinate of the hospital) in charge of carrying out hospital's obligations. In other word, hospital acts as the principal, while doctors are the agent. On the other hand, patient is the party to give counter-achievements. This kind of relationship usually applies to government-owned hospitals whose doctors are paid in full regularly, not based on the number of patients he treated or the quality and quantity of medical procedures performed by doctors. Therefore, in these cases where the patient suffer loss due to medical personnel negligence, then hospital deemed liable.

2) Medical Personnel working Pattern

As described above, there are at least three kinds of working relation pattern between medical personnel (doctor) and hospital. They are: doctor as employee, doctor as partner (attending physician), and doctor as independent contractor. Each determines whether the hospital is liable for the losses caused by medical personnel negligence and to what extent liability to be fulfilled. As explained above, if the doctor works as an employee, then hospital is liable for medical negligence. Meanwhile, if the doctor works as attending physician, then the doctor himself must take full responsibility of his causing harm to the patient.

3) Hospital as Corporation

Hospitals as legal entity (corporation) is accountable for malpractice within this health care institution in accordance with vicarious liability doctrine. This legal doctrine assigns liability for an injury to entity who did not cause the injury (in this case is hospital management) since hospital has a particular legal relationship to medical personnel (as hospital's subordinate) who did act negligently. Based on this principle, it is possible for a corporation to be accounted responsible for the actions carried out by its employees, proxies, mandates, or subordinates.

E. CONCLUSION

Legal relation between medical personnel and hospital can be identified with working relation pattern. The patterns of working relation are: doctor as employee, doctor as partner (attending physician), and doctor as independent contractor. Each determines whether the hospital is liable for the losses caused by medical personnel negligence and to what extent liability to be fulfilled. Principle of vicarious liability is applied to hospital corporation. It implies that hospital is responsible on the loss due to medical negligence made by its subordinates. In terms of medical service, hospital (as employer) is liable to medical negligence of its subordinate (employee).

F. SUGGESTION

Specific regulation on legal relationship between medical personnel and hospital needs to be clearly arranged. It is also necessary to add clause on legal relation and legal protection in hospital affair bill for public to understand the scope of hospital liability on this issue.

REFERENCES

- Agus Budiando dan Gwendolyn Ingrid Utama. 2010. *Aspek Jasa Pelayanan Kesehatan Dalam Perspektif Perlindungan Pasien*. Bandung: Karya Putra Darwati.
- Bader Johan Nasution. 2005. *Hukum Kesehatan dan Pertanggungjawaban Dokter*. Jakarta: PT. Rineka Cipta.
- Endang Kusuma Astuti. 2009. *Transaksi Terapeutik dalam Upaya Pelayanan Medis dalam Rumah Sakit*. Bandung: PT. Citra Aditya Bhakti.
- Sofwan Dahlan. 2000. *Malpraktek, Pencegahan dan Upaya menghadapi tuntutan Hukum Pada Profesi Kedokteran : Dalam Pedoman Profesi Kedokteran*. Semarang : Badan Penerbit Universitas Diponegoro.
- Sri Siswati. 2015. *Etika dan Hukum Kesehatan dalam Perspektif Undang-Undang Kesehatan*. Jakarta: Rajawali Pers.
- Syahrul Machmud. 2008. *Penegakan Hukum dan Perlindungan Hukum Bagi Dokter yang Diduga Melakukan Medikal Malpraktek*. Bandung: Mandar Maju.