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Abstract

Hospital is a health service institution that provides complete individual health services (health services that include promotive, preventive, curative, and rehabilitative services) that provide inpatient, outpatient, and emergency services. 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 this health law regulates the rights and obligations of each service provider and service recipient or the community, either as individuals (patients) or community groups. The purpose of the study was to determine the legal responsibilities related to patient rights; legal responsibilities related to obligations set by the government; and legal responsibilities related to the task of carrying out the legislation. The research method uses analytical descriptive with a normative juridical approach, which uses secondary data in the form of legislation and research results. The conclusion is that legal responsibility for patient rights is the same as in general responsibilities, legal liability is classified into civil and criminal liability, and the responsibility is based on statutory provisions.

Keywords: Responsibility, law, hospital, patient care, covid-19 period

1. Introduction

According to the Law of the Republic of Indonesia No. 44 of 2009 concerning Hospitals, hospitals are health service institutions that provide complete individual health services (health services that include promotive, preventive, curative and rehabilitative services) that provide inpatient, outpatient, and emergency services. Hospital is a place to take care of the sick, provide and provide health services covering various health problems (Ruslina & Sekarsari, 2020; Patel et al., 2020). The Indonesian Ministry of Health stated that the hospital is a service center that provides basic medical and specialist medical services, medical support services, care services, both outpatient, inpatient and installation services. Hospitals as a health facilities can be run by the government and/or the community.

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 this health law regulates the rights and obligations of each service provider and service recipient or the community, either as individuals

(patients) or community groups. Health law is relatively young when compared to other laws. The development of new health law began in 1967, namely with the holding of the "world congress on medical law" in Belgium in 1967.

In carrying out health service efforts, the Hospital as a legal subject has made several achievements against legal subjects (patients), by involving other legal subjects under their responsibility (HR at the Hospital). Therefore, legal relationships that occur in hospitals are generally very complex as well as their scope (Bakewell et al., 2020; Achmad, 2021). This is due to the legal relationship that occurs in health services at the hospital, related to several legal subjects in their respective legal positions, with various forms of legal action.

In a legal sense, responsibility means "attachment". Every human being from the moment he is born until he dies has rights and obligations and is called a legal subject (Jecker et al., 2020; Gebbia et al., 2020). Likewise, a hospital, as a legal subject, is natural if in carrying out health services, it is bound and must be responsible for all things that arise as a result of the implementation of its legal position as the bearer of rights and obligations.

In the hospital law, the hospital's legal responsibility is explicitly formulated in article 46, that "hospitals are legally responsible for all losses caused by negligence committed by health workers in hospitals." The formulation of this law is only from a civil perspective. However, in fact, if it is reviewed further, the legal responsibility of the hospital in principle is the responsibility that can be assigned to the hospital as a health service facility in carrying out health efforts. The responsibilities in question include:

- a) Legal responsibilities related to patient rights;
- b) Legal responsibilities related to obligations set by the government;
- c) Legal responsibilities related to the task of carrying out the law.

Corona virus is part of a family of viruses that cause disease in animals as well as in humans. In Indonesia, still fighting the Corona Virus until now, as well as in other countries. The number of Corona Virus cases continues to grow with some reporting recoveries, but not a few who have died. Handling and prevention efforts continue to be carried out to fight COVID-19 with flu-like symptoms.

His case started with pneumonia or mysterious pneumonia in December 2019. In December 2019, the first case of mysterious pneumonia was reported in Wuhan, Hubei Province. The source of the transmission is still unknown, but the first case was linked to a fish market in Wuhan.

Initially, this disease was temporarily named as 2019 novel coronavirus (2019-nCoV), then WHO announced a new name on February 11, 2020, namely Coronavirus Disease (COVID-19) caused by the Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2) virus.). Since the first case in Wuhan, there has been an increase in COVID-19 cases in China every day and peaked between late January to early February 2020. Initially, most reports came from Hubei and surrounding provinces, then increased to other provinces and throughout China.

The first COVID-19 reported in Indonesia on March 2, 2020 was two cases. Data on March 31, 2020 showed that there were 1,528 confirmed cases and 136 deaths. The COVID-19 mortality rate in Indonesia is 8.9%, this figure is the highest in Southeast Asia (Kartikawati, 2021).

Based on the case of the outbreak in Indonesia, all health workers will certainly be preoccupied with the continued increase in positive cases of residents affected by COVID-19 (Nurhalimah, 2020; Pudjiastuti, 2021). This made the government rack its brain to provide health services evenly to all levels of society affected by COVID-19 so that finally several hospitals in each region were appointed as referral hospitals for COVID-19 patients.

The referral hospital, of course, prioritizes health services for patients affected by COVID-19 by prioritizing health protocol standards that have been determined by the government. On the basis of this background and because of several things that made the author interested, namely how hospital health services and their legal responsibilities in serving patients during the current covid-19 outbreak are happening. So the researcher wants to analyze it further and discuss it in an article entitled Hospital's Legal Responsibility in Health Services During The Covid-19 Pandemic.

2. Method

To be able to find out and discuss material in research that discusses the legal responsibility of hospitals in health services during the covid-19 pandemic, it is necessary to have an approach using scientific research methods.

In this study, using library research which includes applicable laws and regulations including the Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals, Regulation of the Minister of Health of the Republic of Indonesia Number 71 of 2013 concerning Health Services in National Health Insurance, as well as books and articles that are closely related to the issue of hospital legal responsibility in health services during this covid-19 pandemic.

3. Result and Discussion

According to the Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals, explaining the hospital is a health service institution that provides complete individual health services (health services that include promotive, preventive, curative, and rehabilitative) that provide inpatient, outpatient services, and the emergency department. 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, medical treatment services, which are carried out for 24 hours through individual health efforts. According to the World Health Organization (WHO) (Aktariyani, 2020), the definition of a hospital is as follows:

“A comprehensive or integral part of social and medical organizations, functions to provide complete health services to the community, both curative and rehabilitative, where outpatient services reach families and the environment, and hospitals are also centers for training health workers and for bio-social research (Cohen et al., 2020).”

The hospital as an organ that 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.

The Ministry of Health of the Republic of Indonesia states that the hospital is a service center that provides basic medical and specialist medical services, medical support services, care services, both outpatient, inpatient and installation services. Hospitals as a health facility can be run by the government and/or the community.

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 this health law regulates the rights and obligations of each service provider and service recipient or the community, either as individuals (patients) or community groups (Nuratih et al., 2021). Health law is relatively young when compared to other law. The development of new health law began in 1967, namely with the holding of the "world congress on medical law" in Belgium in 1967.

In carrying out health service efforts, the Hospital as a legal subject has made several achievements against legal subjects (patients), by involving other legal subjects under their responsibility (HR at the Hospital). Therefore, legal relationships that occur in hospitals are generally very complex as well as their scope. This is due to the legal relationship that occurs in health services at the hospital, related to several legal subjects in their respective legal positions, with various forms of legal action.

Legal relations in health services in hospitals can be established between hospitals and patients, hospitals with health workers under their responsibility and hospitals with third parties that have to do with patients. Basically the rights and obligations of patients, doctors and hospitals, must be carried out in a balanced manner. In the sense that these rights and obligations apply reciprocally, where the rights of one party become the obligations of the other party, and vice versa. If one party does not carry out his obligations, he cannot claim the rights that are the balance of his reciprocal obligations to the other party.

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In the hospital law, the hospital's legal responsibility is explicitly formulated in article 46, that "hospitals are legally responsible for all losses caused by negligence committed by health workers in hospitals." The formulation of this law is only from a civil perspective. However, in fact, if it is reviewed further, the legal responsibility of the hospital in principle is the responsibility that can be assigned to the hospital as a health service facility in carrying out health efforts. The responsibilities in question include:¹

- a) Legal responsibilities related to patient rights;
- b) Legal responsibilities related to obligations set by the government;
- c) Legal responsibilities related to the task of carrying out the law.

Legal liability (legal liability) according to the black's law dictionary has the meaning "liability which courts recognize and enforce as between parties litigant". So responsibility implies "a state of being capable of the burden of obligations for everything as a result of his actions". The definition of responsibility above must have the following elements:

a. Skills

Legally competent includes both legal persons and entities. A person is said to be capable basically because that person is an adult or has reached puberty and has a healthy mind. A legal entity is said to be capable if it is not declared bankrupt by a court decision. According to the Civil Code in Article 1330, incompetent people are:

- a) Immature people
 - b) People who are put under forgiveness
 - c) Women in matters stipulated by law and all persons to whom the law has prohibited certain agreements
- b. Liability burden

¹ Ibid

The element of obligation implies something that must be done, it cannot not be carried out, so it must exist or must.

c. Actions The element of action contains the meaning of everything that is done.

From the explanation of the elements above, it can be stated that responsibility is a state of competence according to law, both individuals and legal entities, and able to bear obligations for everything that is done.

As part of health law, the essence of hospital law is the application of civil law, criminal law and state administrative law, so the scope of hospital responsibility includes civil liability, criminal responsibility and state administrative responsibility.

a. Civil liability

As is known, the legal relationship that exists between the hospital and the patient in the perspective of civil law is a contractual relationship that creates rights and obligations for each party. According to civil law, there is a difference between a breach of contract and an act that violates the law (Barranco et al., 2020). Default is a condition where a person does not fulfill obligations based on an agreement or contract. Meanwhile, unlawful acts include the notion of doing or not doing something that violates the rights of others and is contrary to legal obligations or decency or decency in society, both towards oneself and others.

b. Criminal liability

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 someone has been said to have committed a crime at least there must be three elements, namely: first, there is a violation of written law, the second is that the act is against the law and the third is that there is an element of wrong doing. (dolus). The element of error can be intentional and can also be negligence. Deliberate means that it is intentional and violates the law, the action is carried out consciously, the goals and actions are directed. While negligence is unintentional, negligent, there is no motive or purpose to cause the consequences that occur.

In relation to hospital health services, for the emergence of criminal responsibility in health services by hospitals, it must first be proven that there was a professional error committed by health workers who carry out health service efforts in hospitals. Based on this understanding, the criminal responsibility in question is imposed on health workers who make mistakes when carrying out health service tasks in hospitals.

4. Conclusion

Health services at hospitals during the COVID-19 outbreak were still the same as health services in general, only the emphasis was on health protocols in accordance with standard procedures set by the government. The legal responsibility for health services in hospitals is divided into two, namely civil and criminal liability. As is known, the legal relationship that exists between the hospital and the patient in the perspective of civil law is a contractual relationship that creates rights and obligations for each party. Violations in the implementation of these rights and obligations will lead to civil disputes. In relation to hospital health services, criminal responsibility for health services by hospitals can also occur. In proving criminal liability, it must first be proven

that there was a professional error committed by health workers who carry out health service efforts in hospitals. Based on this understanding, the criminal responsibility in question is imposed on health workers who make mistakes when carrying out health service tasks in hospitals.

Reference

- Achmad, W. (2021). Citizen and Netizen Society: The Meaning of Social Change From a Technology Point of View. *Jurnal Mantik*, 5(3), 1564-1570.
- Aktariyani, T. (2020). Perlindungan Hukum Residen Dalam Penanganan Pasien Covid-19 Di Indonesia. *Jurnal Kebijakan Kesehatan Indonesia: JKKI*, 9(4), 225-231.
- Bakewell, F., Pauls, M. A., & Migneault, D. (2020). Ethical considerations of the duty to care and physician safety in the COVID-19 pandemic. *Canadian Journal of Emergency Medicine*, 22(4), 407-410.
- Barranco, R., Messina, C., Bonsignore, A., Cattrini, C., & Ventura, F. (2020). Medical liability in cancer care during COVID-19 pandemic: heroes or guilty?. *Frontiers in Public Health*, 8.
- Cohen, I. G., Crespo, A. M., & White, D. B. (2020). Potential legal liability for withdrawing or withholding ventilators during COVID-19: assessing the risks and identifying needed reforms. *Jama*, 323(19), 1901-1902.
- Gebbia, V., Bordonaro, R., Blasi, L., Piazza, D., Pellegrino, A., Iacono, C., ... & Firenze, A. (2020). Liability of clinical oncologists and the COVID-19 emergency: Between hopes and concerns. *Journal of cancer policy*, 25, 100234.
- Jecker, N. S., Wightman, A. G., & Diekema, D. S. (2020). Prioritizing frontline workers during the COVID-19 pandemic. *The American Journal of Bioethics*, 20(7), 128-132.
- Kartikawati, D. R. (2021). Tanggung Jawab Rumah Sakit terhadap Pemenuhan Hak Pasien pada Masa Pandemi COVID-19. *Indonesia Law Reform Journal*, 1(3), 318-335.
- Nuratih, N. K. R. T. A., Wijaya, I. K. K. A., & Widiati, I. A. P. (2021). Tanggung Jawab Pemerintah Terhadap Penanggulangan Covid-19 dalam Rangka Pelayanan Medis di Rumah Sakit. *Jurnal Preferensi Hukum*, 2(2), 248-253.
- Nurhalimah, S. (2020). Covid-19 dan hak masyarakat atas kesehatan. *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 7(6), 543-554.
- Patel, L., Elliott, A., Storlie, E., Kethireddy, R., Goodman, K., & Dickey, W. (2020). Ethical and legal challenges during the COVID-19 pandemic: are we thinking about rural hospitals. *J Rural Health*.
- Pudjiastuti, D. (2021). Kepastian Hukum Jaminan Pelayanan Kesehatan Bagi Masyarakat Yang Dinyatakan Positif Covid 19 Dalam Rangka Perlindungan Hak Asasi manusia. *Jurnal Dialektika Hukum*, 3(2), 130-157.
- Ruslina, E., & Sekarsari, R. (2020). Legal Protection of Medical Staff in Hospitals during The Covid-19 Pandemic Era. *International Journal of Latin Notary*, 1(1), 29-35.

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