

LEGAL LIABILITY FOR MEDICAL ERRORS IN HEALTH SERVICES IN HOSPITALS

RESPONSABILIDADE LEGAL POR ERROS MÉDICOS NOS SERVIÇOS DE SAÚDE EM HOSPITAIS

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Health. Legal policies so that medical errors in health services in hospitals can be minimized through several stages, namely the formulation stage (legislative policy), the application stage (judicial policy) and the execution stage (executive policy).

Keywords: Law. Medical Error. Hospital. Liability.

Resumo: A regulamentação dos serviços de saúde em hospitais já existe para proteger os interessados, embora ainda existam erros nos serviços de saúde. Vários casos de disputas médicas entre pacientes e hospitais ocorreram na Indonésia. Com base nesse pano de fundo, tem-se a formulação do problema discutido neste estudo, que é o seguinte: Como se dá a responsabilidade legal por erros médicos em serviços de saúde em hospitais. E como está a política legal para que os erros médicos nos serviços de saúde em hospitais possam ser minimizados. O tipo de pesquisa que será utilizado é do tipo normativa, onde o autor examina o direito positivo relacionado à responsabilidade legal por erros médicos em hospitais e usa dados secundários na forma de outros materiais legais como dados nesta redação. Os resultados do estudo mostram que a responsabilidade legal por erros médicos em serviço de saúde no hospital pode ser resolvida por

legitimidade ou não contenciosa. Legalmente, pode ser processado por indenização com base no artigo 1367.º do Código Civil ou criminalmente com base no artigo 360.º em conjugação com o artigo 55.º do Código Penal. Já a extrajudicial pode ser feita por meio da mediação com base no artigo 29 da Lei nº 36 de 2009 relativa à Saúde. Políticas legais para que os erros médicos nos serviços de saúde em hospitais possam ser minimizados através de várias etapas, nomeadamente a fase de formulação (política legislativa), a fase de aplicação (política judiciária) e a fase de execução (política executiva).

Palavras-chave: Direito. Erro Médico. Hospital. Responsabilidade.

1. Introduction

Hospitals have the obligation to provide health services to the community indiscriminately. In this service every hospital must have an effective, efficient, and accountable organization (Article 33 paragraph (1) of the Hospital Law No. 44/2009) and every hospital must hold a hospital governance and good clinical governance (Article 36 Hospital Law No. 44/2009). Hospitals are required to provide services with service standards and high levels of professionalism to patients, so that for that to meet the demands and protect hospital owners, hospital organizers, health workers and protect patients. The hospital is obliged to compile and implement the Hospital Internal Regulations (Hospital by Laws) as stipulated in Law No. 44 of 2009 concerning Hospital Article 29 paragraph (1) letter (r), in addition to other regulations determined by the hospital as a guide in managing the hospital. Hospital by Law itself is regulated based on the Decree of the Minister of Health of the Republic of Indonesia Number: 772/Menkes/SK/VI/2002 concerning Guidelines for Hospital Internal Regulations. Hospital by Laws not regulating hospital operational technical policies but rather regulates matters, as follows:

1. Hospital Owner Organization or representing.
2. Role, duties, and authority of hospital owners or representing.
3. The role, duties, and authority of the hospital director.
4. Medical Staff Organization.
5. Role, duties, and authority of medical staff.

Hospital by Laws has a function:

1. As a reference for hospital owners in conducting hospital supervision.
2. As a reference for hospital director in managing hospitals and developing operational technical policies.
3. Means to ensure effectiveness, efficiency and quality.

4. Means of legal protection for all parties related to hospitals.

5. As a reference for conflict resolution in hospitals between owners, hospital director and medical staff.

6. To meet hospital accreditation requirements

If the hospital has made and established hospitals by laws well and obeyed as it should, it will create legal certainty for the owner, manager, health worker and the community. Besides that there are hospital obligations (Article 29 No. 44/2009), namely providing correct information about hospital services to the community; Providing safe health services (patient safety), quality, anti -discrimination, and effective by prioritizing patient interests in accordance with hospital service standards; Providing emergency services to patients in accordance with their service capabilities; play an active role in providing health services to disasters, according to the ability of its services

Health service regulations in hospitals already exist in order to protect the parties concerned, however there are still errors in health services. Several cases of medical disputes between patients and hospitals that have occurred in Indonesia include the case of the loss of baby number 98 at Hasan Sadikin Hospital in Bandung in 1987, the case of the O₂ gas exchange with CO₂ gas during the operational action at Dokter M Yunus Bengkulu Regional Hospital in 2001, and Debora's baby case at Mitra Keluarga Kalideres Hospital in Jakarta in 2017. Various cases of medical disputes invite questions about how the Hospital Responsibility as an institution of health service facilities. In the 1945 Constitution Article 34 paragraph 3 it is explained that citizens are entitled to a decent service. In addition, Article 1 paragraph 3 of the 1945 Constitution also emphasized that the State of Indonesia is a state of law, meaning all state administration including health services held in hospitals must be based on law.

2. Problem Formulation

Based on this background, there is a problem formulation discussed in this study, as follows:

- a. What is the legal accountability for medical errors in health services in hospitals?
- b. What is the legal policy so that medical errors in health services in hospitals can be minimized?

3. Methods

The type of research to be used is a type of normative research, where the authors study positive law related to legal accountability for medical errors in hospitals and use secondary data in the form of other legal materials as data in this writing. With the process of thinking in drawing conclusions is deductive, which departs from general propoisis whose truth has been known in the form of laws and regulations related to legal accountability for medical errors in the hospital and ended at a special conclusion.

4. Discussion

The nature of health services is to provide assistance or assistance to patients. Relief given by the hospital through health workers to patients raises a therapeutic agreement. The therapeutic agreement is an agreement that occurs between hospitals and or doctors with patients, not only in the field of treatment but includes the fields of diagnostic, promotive, preventive and rehabilitative. The relationship that occurs in the therapeutic agreement becomes the basis of health services between doctors and patients, by prioritizing the principle of ethics to completion in providing help, providing assistance, doing good and not harming the patient. Relief given by doctors in hospitals to patients sometimes cause consequences that are detrimental to the potential for violations of criminal law. Before a certain act is said to be a criminal act or offense, the alleged existence of a criminal acts is the starting point of the long process of investigation. Before the investigation, the incident was not necessarily said as a criminal act. (Ridwan Eko Prasetyo, 2015)

Article 66 of Law No. 29 of 2004 concerning Medical Practices Paragraph (1) Every person who knows or is suffered by their interests on the actions of doctors or dentists in carrying out medical practices can complain in writing to the Chairperson of the Indonesian Medical Discipline Honorary Council. (3) Complaints as referred to as paragraph (1) and paragraph (2) do not eliminate the rights of every person who reports the alleged criminal offense to the authorities and/or sued civil loss to the court. In the study to determine the existence of violations of the law of the authorities or in this case the investigator will wait for the results of the decision from the Indonesian Medical Discipline Honorary Council. If the decision there is a violation with the law, the doctor will be held

accountable. The hospital can also be held accountable to be completed by measurement or non-melligation. The responsibility of the hospital is regulated in Article 46 of Law No.44 of 2009 concerning Hospitals which states that the hospital is legally responsible for all losses caused by negligence made by health workers in the hospital. Hospital law malawan against patients can be in the form of negligence carried out by Daoter or health workers that cause damage to the victim's body. This criminal action gave birth to legal responsibility that could be imposed sanctions. (Anny Retnowati-Sundari, 2020). The hospital is in charge of health workers doing health services, responsible for everything that happens in the hospital. Provisions regarding civil responsibility are regulated in 1367 of the Civil Code as follows "A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of the people who are dependents, or caused by people who are located Under his supervision ... etc. "

The hospital is also likely to receive a burden of criminal responsibility, when it has a contribution in professional errors made by health workers when carrying out medical treatment/actions in the hospital. This is as stipulated in Article 43 of Law Number 44 of 2009 which states "Hospitals are required to apply patient safety standards", which in the explanation is described that what is meant by patient safety is a process in a hospital that provides services safer patients. In this case in addition to doctors and related health workers receiving the burden of criminal responsibility in accordance with Article 360 of the Criminal Code, the Head of the Hospital also received the burden of the criminal responsibility in accordance with Article 55 of the Criminal Code (Participation). (Sigit Lesmonoajati, 2020). The civil and criminal settlement is a measures. Whereas non-measurement with mediation becomes an alternative settlement that can be chosen by the patient or patient's family. This is as regulated in Article 29 of Law Number 36 Year 2009 concerning Health. Regulates as follows "In the case of health workers allegedly conduct negligence in carrying out their profession, the negligence must be completed first through mediation. Then here the hospital will also be involved In this mediation if the error of the health worker concerned makes medical errors in the hospital.

Accountability for medical problems in hospitals must be upheld because for justice and legal certainty in health services. Justice is a means that can be a border of the nodes of people's lives that have begun to tenuous (Caritas Woro Murdiati, 2019). PEAPS Through law means that law is a means to get certainty. With the word, not only through the law of certainty can be obtained but the law itself has certainty. (Hyronimus Rhiti-Tim Author FH

UAJY, 2020) Justice and Legal Certainty in Law Enforcement for Medical Obligations in Hospitals will provide legal protection to the community in health services. Besides that, it will also minimize medical errors in health services in hospitals. Law enforcement in health services in hospitals is still not optimal so far, legal policies are needed.

According to Barda Nawawi Arif who was quoted by Anny Retnowati. (Anny Retnowati, 2019) states that the prevention and prevention of crime by means of "penal" is a "penal policy" or criminal law policy whose operationalization through several stages:

- a. Formulation stage (legislative policy)
- b. Judicial Policy
- c. Execution Stage (Executive Policy).

At the formulation stage (the process of making legislation); The disadvantage that appears in practice is that law enforcement is still oriented towards dogmatic law solely. In health law there needs to be a clear understanding of the existing medical errors so far regulated medical actions that are not permitted and can be convicted. Likewise, the formation of the law needs to understand the existing facilities and infrastructure to support the regulations held. The existence of health law should also be regulated to be formed by the existence of law enforcement officials and special justice in the field of health.

At the application stage (judicial policy), law enforcement officials should have the ability to protect the community and support national development and aimed at the use of legal apparatus and improve the professional capabilities of their apparatus. Then at this stage it is necessary to have facilities and infrastructure to process malpractice cases. At this time there are no law enforcement and special justice officials for medical malpractice cases, so that justice has not yet appeared to the community towards medical malpractice.

At the execution stage (execution policy), a laws and regulations are formed by the state in the hope that it can be accepted and obeyed by the whole community consciously without exception. Such hopes have the consequence that every legislation must pay close attention to every social phenomenon that develops. As long as malpractice problems in the health sector are still handled by general courts, it is certain that health law enforcement is not in accordance with the expectations of the community. This is in line with the opinion of Sudarto who was quoted by Anny Retnowati (Anny Retnowati, 2018) as follows

- a. Efforts to realize good regulations in according to the condition and situation in a certificate time.

b. The policy of the state through institutions which have authorities to determine regulations which would be used to express what is implied in the society and to achieve what is hoped.

Legal policy is an effort to realize good regulations in accordance with conditions and situations within a certain time. And state policies through institutions that are authorized to establish regulations that will be used to express what is implied in society and to achieve what is expected. In this case legal policies are expected to be effective and optimal in health services.

5. Conclusion

1. Legal accountability for medical errors in health services in hospitals can be completed by mediation or non-measure. Measure can be sued for compensation based on Article 1367 of the Civil Code or prosecuted based on Article 360 in conjunction with Article 55 of the Criminal Code. Whereas non-measurement can be based on mediation based on Article 29 of Law Number 36 of 2009 concerning Health.

2. Legal Policy so that medical errors in health services in hospitals can be minimized through several stages, namely the formulation stage (legislative policy), the application stage (judicial policy) and the execution stage (executive policy).

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