

LEGAL PROTECTION OF PATIENTS NEEDING EMERGENCY TREATMENT NEGLECTED BY DOCTORS IN HOSPITAL EMERGENCY UNITS

Yeni Nuraeni

Program Studi Ilmu Hukum, Pascasarjana Universitas Pakuan

Keywords	Abstract. One of the main health-related problems is the health services provided by doctors. The services provided by these doctors are in the form of assistance or assistance based on the patient's trust in the doctor. The purpose of this research is to find out the responsibility of the home for negligence in patients who need emergency care which was neglected by a doctor resulting in the patient's death, and the implementation of the patient's rights in medical services at home in accordance with Law Number 29 of 2004 concerning Medical Practice. The method used in this study is descriptive analytical with a normative juridical approach. The Hospital Law provides legal certainty so that hospitals can carry out their management functions more optimally. If in hospital services and other medical personnel refuse to carry out treatment and do not provide treatment that is in accordance with the patient's medical needs, it is an act against the law. The actions of doctors and medical personnel that cause harm to patients, let alone until the patient dies, the hospital can be legally held accountable, so that it can be prosecuted criminally and civilly.
----------	---

Email : yeni.nuraeni@unpak.ac.id

Copyright 2023 Fox Justi : Jurnal Ilmu Hukum

1. INTRODUCTION

Andrianto, Kusumayingtyas & Muthiarani (2021) A hospital is a health service institution that provides complete individual health services, both promotive, curative and rehabilitative, which provides inpatient, outpatient and emergency services. Saputra (2018) Everyone has the right to receive health services according to their needs, this can be seen in Article 28 H paragraph (1) of the 1945 Constitution which states that "Every person has the right to live in physical and spiritual prosperity, to have a place to live and to have a safe environment good and healthy and have the right to obtain health services. The services provided by these doctors are in the form of assistance or assistance based on the patient's trust in the doctor. Without this trust, the health efforts provided will not obtain maximum results. Medical services are an important part of the entire health care system, in particular the work field of doctors, inseparable from various sectors of human life which are interrelated, especially for developing countries like Indonesia (Komalawati, 1999: 1).

The relationship between doctors and patients has a special position, namely doctors as health providers (parties who provide health services) and patients as health recipients (parties receiving health services). The legal relationship between the patient and the hospital starts from a therapeutic transaction, when the patient comes to the hospital to consult about his health condition, there is communication between the patient and the doctor (Supeno, Razi & Faradila, 2021). This relationship begins when the doctor expresses his willingness either verbally (oral statement) or impliedly (implied statement) which shows the attitude or action that shows the doctor's willingness. Attitudes or actions that can indicate willingness, such as accepting registration, providing serial numbers, providing and recording medical records and so on. The contractual relationship between the doctor and the patient is called a therapeutic contract (Dahlan, 2000: 33). The relationship between doctors and patients leads to the quality of the medical treatment provided.

Jadda (2017) Hospitals guarantee legal protection for health workers so that they do not cause medical errors in treating patients, as well as patients getting legal protection from the responsibility of the hospital and health workers. Emergency incidents can occur anytime, anywhere and can happen to anyone. Others, close friends, family or ourselves can be victims. Emergency events usually take place quickly and suddenly, so it is difficult to predict when they will occur. The best step for this situation is to be alert and make concrete efforts to anticipate it and of course a form of assistance mechanism

must be thought of for victims from the start of the incident, during their journey to health facilities, assistance at health facilities until after the injury occurs.

Saputra & Suranto (2014) The new paradigm of health services requires hospitals to provide quality services according to the needs and wishes of patients while still referring to the professional and medical code of ethics. Based on Law Number 44 of 2009 concerning Hospitals and Law Number 36 of 2009 concerning Health it is clear that in providing health services a hospital or doctor working in a hospital can provide first aid to patients in an emergency. This is in accordance with Article 32 paragraph (1) and (2) of Law Number 36 of 2009 concerning Health, which stipulates that: "In an emergency, health service facilities, both government and private, are obliged to provide health services for the life of the patient. and prevent disability in advance. A doctor in carrying out his obligations to patients is always not free from errors and mistakes that can have negative consequences for patients (Muchsini, 2009).

Based on the provisions above, health services in the emergency department must prioritize the interests and safety of patients in terms of preventing disability and death for patients, then in Article 1 paragraph (2) and Article 29 paragraph (1) letter c of Law Number 44 Year 2009 concerning Hospitals, further clarified by: "Emergency Care is a patient's clinical situation that requires immediate medical action to save lives and prevent further disability. Providing emergency services to patients in accordance with the service capabilities. Therefore, every doctor is obliged to provide emergency assistance as a humanitarian duty, except when he is sure that someone else is willing and able to provide it (Sungguh, 2014: 5).

For example, at around 00.30 WIB on December 23 2005, the Ribun Ong patient was delivered and arrived at Pluit Hospital after undergoing treatment in Singapore, and further treatment will be carried out at Pluit Hospital where previously it was confirmed to Pluit Hospital regarding the arrival of Ribun patient Ong from Singapore. After arriving at Pluit Hospital, the patient was rejected and left to lie down in the Emergency Unit which actually had to immediately undergo further treatment in the ICU where he really needed high ventilator pressure to help breathe so he could survive where the ventilator and other equipment needed were only in the ICU.

Pluit Hospital insists that it does not want to accept Ribun Ong's patients, but also does not recommend that Ribun Ong be referred elsewhere for immediate treatment. And Pluit Hospital just let it go for hours in the Emergency Room even though the Accompanying Doctor from Singapore had repeatedly reminded Pluit Hospital to immediately take Ribun Ong's patient to the ICU to get treatment with this high-pressure ventilator. The patient did not receive treatment and was left in the ER so that Ribun Ong's condition began to experience a critical state and lost the "Golden Period" to save the life in question. After the situation became critical, Pluit Hospital carried out treatment but it was too late which in the end, the patient Ribun Ong died.

Based on this background, this study aims to describe the legal protection for patients who need emergency treatment who are neglected by doctors in the emergency department. The research questions to guide the analysis are outlined as follows: First, the responsibility of the home for negligence in a patient who needs emergency care that was neglected by a doctor resulting in the patient's death. Second, the exercise of patient rights in medical services at home in accordance with Law Number 29 of 2004 concerning Medical Practice.

2. METHOD

The research was carried out in an analytical descriptive manner, namely describing the data obtained from observations, interviews, documents and field notes, then analyzed which was poured into the form of a thesis to explain the problem with the chosen title, namely juridical analysis (Soekanto and Mahmudji, 2015: 13-14). The approach method used is normative juridical with secondary data types which consist of primary legal materials, secondary legal materials and tertiary legal materials. The data obtained was analyzed using a qualitative juridical analysis. This research is normative legal research carried out through a study of written legal regulations or existing legal materials (Soekanto and Mahmudji, 2015: 13-14). The research conducted a review of this secondary data including official legal documents, results of previous research, and other library materials in that stage. With regard to

official legal documents, the researcher conducted a study of primary legal materials which are binding and closely related to the issues under study. This research is descriptive-analytical in nature, namely by explaining in full and systematically about the legal situation that applies in a certain place, at a certain time and at a certain legal event, with the aim of obtaining a complete description.

3. RESULTS AND DISCUSSION

A. Hospital Responsibility for Negligence in Patients Requiring Emergency Care Neglected by Doctors, Resulting in Patient Death

As a result, the Pluit Hospital deliberately let and neglected Ribun Ong's patient in the emergency room, and had refused to carry out treatment and did not provide treatment according to the patient's medical needs, was an illegal act and contrary to law and humanity. This is as stipulated in Law Number 29 of 2004 concerning Medical Practice, specifically article 51 letters (a and d) which reads "a doctor or dentist in carrying out medical practice has the obligation to: a. provide medical services in accordance with professional standards and standard operating procedures as well as the medical needs of patients, while letter d reads "carry out emergency assistance on a humanitarian basis, unless there is another person on duty and is able to do so and has violated article 14 of the Indonesian Medical Code of Ethics which reads " Every doctor is obligated to provide emergency assistance as a humanitarian duty, unless he is sure that someone else is capable of providing it.

Whereas for the Hospital, as stated in Article 46 of Law Number 44 of 2009 concerning Hospitals states, Hospitals are legally responsible for all losses caused by negligence committed by health workers at the Hospital. Based on the provisions of the article above, losses caused by intentional or medical risks carried out by health workers in health services at hospitals are not only the responsibility of the health worker concerned, but are the responsibility of the hospital. However, Article 58 Paragraph (1) of Law Number 36 of 2009 concerning Health states that everyone has the right to claim compensation against a person, health worker and/or health provider who causes a loss as a result of an error or negligence in the health services they receive.

The health law does not explicitly state that losses resulting from mistakes or negligence in service are the responsibility of the hospital, but rather the responsibility of the health provider. Article 46 of Law Number 44 of 2009 concerning Hospitals and Article 58 Paragraph (1) of Law Number 36 of 2009 concerning Health do not seem to mutually reinforce who is responsible for losses due to errors or negligence in the health services they receive. So that it is difficult for patients to sue the hospital to take responsibility due to intentional or medical risks in health services carried out by health workers even though it happens in the hospital itself.

Nonetheless, the patient on behalf of Ribun Ong the provisions of Article 46 of Law Number 44 of 2009 concerning Hospitals provide a breath of fresh air that patients can also sue the Hospital for losses suffered as a result of negligence in health services carried out by health workers while on duty at the Hospital. So, in this case the patient can get more certainty of compensation than just suing the health worker concerned.

Whereas for Hospitals, the provisions of Article 46 of the Hospital Law provide clarity that Hospitals can only be prosecuted for negligence committed by health workers who are carried out in Hospitals. This clearly benefits the Hospital. Losses resulting from intentional errors committed by health workers are not the responsibility of the hospital, but are the responsibility of the health worker concerned, even if it is done in the hospital.

Hospitals and patients who suffer losses as a result of negligence in health services at hospitals are both legal subjects who can be subject to rights and obligations. The law governing the relationship between one legal subject and another legal subject is private law (civil law) in which the domain is protection of rights. Then the law that regulates this legal event is the Civil Code, namely Article 1367 paragraph (3) which reads: "Employers and those who appoint other people to represent their affairs, are responsible for the losses incurred by the servants. their servants or their subordinates in carrying out the work for which these people are used."

In relation to the Civil Code, the employer's responsibility in Article 1367 paragraph (3) of the Civil Code does not only concern responsibilities in work ties, including to someone outside the work

bond who has been ordered by another person to do a certain job, provided that the person ordered to do the job carry out the work independently either on his own leadership or have carried out the work under his direction. As referred to in Article 1601 a of the Civil Code, the employer's responsibility for the unlawful acts of its employees is: "A labor agreement is an agreement by which one party, the worker, binds himself to be under the orders of the other party, the employer, for a certain time to do the job and receive wages.

Comparing the words of Article 46 of Law Number 44 of 2009 concerning Hospitals with Article 1367 of the Civil Code paragraph (3) above, it can be concluded that Article 46 of Law Number 44 of 2009 concerning Hospitals is a derivative or derivative of Article 1367 of the Civil Code paragraph (3) which applies specifically to the Hospital community, or Article 46 of Law Number 44 of 2009 is *lex specialist*.

The provisions of the article above are also in line with the provisions of the superior respondeat doctrine. The doctrine of respondeat superior implies that an employer is a person who has the right to give instructions and control the actions of his subordinates, both on the results achieved and on the methods used. In addition, with the development of health law and the sophistication of medical technology, even hospitals cannot escape the responsibility for the work done by their employees, including what is done by medical personnel (Nasution, 2005: 72).

Theoretically the hospital is bound by the doctrine of respondeat superior, but this doctrine cannot be applied just like that, because for its application certain conditions must be fulfilled, such as there must be a working relationship between superiors and subordinates and the attitude of subordinates must also be within the scope of work assigned to him. Work relations are considered to exist, if the superior has the right to directly supervise and control the activities of the subordinates in carrying out their duties, in this case the work carried out must be a form of an order given by the superior.

Legal liability directed at hospitals as providers of health care facilities does not invalidate the legal responsibility of health workers who commit negligence in health services. Health workers who commit negligence resulting in losses for patients in health services at hospitals are still subject to legal responsibility, as stipulated in Article 1365 of the Civil Code, namely, "Any unlawful act that causes harm to another person requires that the person who because of the mistake causes the loss to compensate for the loss." The responsibility of the hospital to the plaintiff is to compensate for the loss of Rp. 10,000,000,000. - (Ten Billion Rupiah) and material loss of Rp. 1,000,000,000, - (One Billion Rupiah) as legal consultant fees, security forfeiture, emptying, and other costs.

B. Implementation of Patient's Rights in Medical Services in Hospitals According to Law Number 29 of 2004 concerning Medical Practice

Law Number 36 of 2009 concerning Health Article 5 paragraph (2), which states, "Everyone has the right to obtain safe, quality and affordable health services." Therefore, hospitals and medical personnel who refuse to provide medical services are considered to be violating the law, in addition to medical services including criminal acts. Hospitals do not openly reject patients, with various reasons the hospital refuses patients. Indonesia has legal basis regarding patient refusal. Doctors are required to know the legal basis for practicing medicine so that they are more careful in their actions. The following is the legal basis regarding conditions under which doctors may and may not refuse patients.

Conditions in which doctors are not allowed to refuse patients are regulated in Law no. 36 of 2009 Article 32 and Law no. 36 of 2014 Article 59 states that doctors and hospitals may not refuse patients and/or ask for advances if the patient is in an emergency. Indirectly, the two legal bases also state that doctors may not refuse patients for reasons of cost in an emergency. Article 190 of the health Law stipulates that a patient's refusal to be in an emergency situation can result in a criminal penalty. Meanwhile, the conditions under which doctors may refuse patients are regulated in Permenkes 1/2012 Articles 7 and 9, doctors may not treat patients for the following reasons: Doctors are incompetent and there are other doctors who are more competent to treat the patient's illness, and hospital facilities are inadequate or full hospital.

Even though there is a clause where doctors are allowed not to treat patients, it does not mean doctors reject patients "outright". Doctors are required to take the following steps:

- a. Explain to the patient the reasons for refusal.
Facilitate patients to be referred to other doctors/hospitals that have the competence/facilities to treat patients. Patients and families can help to find a place of referral. However, the referring process should still be carried out by doctors so that they are not considered to have abandoned the patient. This is because Article 41 of the Hospital Law states that the government and hospital associations are required to establish a referral network. Indirectly, this regulation states that referrals should be managed by the hospital using the existing network. Although in practice, not all regions have a referral network as referred to in Article 41 of the Hospital Law.
- b. Special Conditions related to Patient Refusal
Following are some specific conditions regarding patient refusal. There are no laws in Indonesia or in other countries that explicitly allow or prohibit doctors from refusing patients based on the doctor's beliefs. Patients sometimes don't want to obey the doctor's orders (e.g. don't want to take medicine, don't want to stop smoking). This can be considered as a violation of the patient's obligations as stated in Law no. 29 of 2004 Article 53. If one of the parties does not carry out their obligations, the therapeutic agreement can be considered failed. However, there is no legal basis in Indonesia that explicitly states that doctors may refuse patients who do not want to comply with doctors. Meanwhile, several sources say that whether the patient agrees or not is the right of the patient's autonomy, so that cannot be used as a reason for deciding on a therapeutic agreement.

The crime in terms of refusal of medical services is regulated in Article 304 of the Criminal Code: "Anyone who deliberately places or allows a person to be in a miserable condition, even though according to the law that applies to him or because of his consent he is obliged to give life, care or maintenance to that person, is punishable by criminal imprisonment for a maximum of two years and eight months or a maximum fine of four thousand five hundred rupiahs."

In addition, Article 531 of the Criminal Code also regulates the criminal act of refusing medical services: "Anyone who, when witnessing that a person is facing death, does not provide the assistance that can be given to him without properly causing danger to himself or others, is threatened, if the person dies, with a maximum imprisonment of three months or a maximum fine of four thousand and five hundred rupiahs."

In articles 304 and 531 of the Criminal Code it is a passive act, in which a person does not commit any physical action, but that person has neglected his legal obligations. Elements of article 304, intentionally leaving someone in a miserable condition, for example: refusal to receive medical treatment from a hospital. And in the Elements in article 531, intentionally not providing assistance to someone who needs medical treatment is punishable by criminal law.

In the case of patient refusal at Pluit Hospital, doctors and health workers deliberately allowed and abandoned patients on behalf of Ribun Ong in the emergency room. Moreover, the doctor had refused to carry out treatment and did not provide treatment in accordance with the patient's medical needs, which was an unlawful act and contrary to the law and humanity as regulated in Law Number 29 of 2004 concerning Medical Practice. So that the rights of patients are not fulfilled.

4. CONCLUSION

The Hospital Act was made to ensure and provide greater certainty in the administration of health in hospitals. For patients, the Hospital Law provides legal certainty that their rights to health services at the hospital will be fulfilled, as well as for health workers working at the hospital. If in the service of hospitals and other medical personnel that cause harm to patients, especially if the patient dies, the hospital can be legally held accountable, so that it can be prosecuted criminally and civilly. Hospitals do not openly reject patients, with various reasons the hospital refuses patients. Doctors and health workers at the hospital intentionally let and neglect patients. Doctors had refused to carry out treatment and did not provide treatment according to the patient's medical needs was an unlawful act and contrary to the law and humanity as stipulated in Law Number 29 of 2004 concerning Medical Practice, so that the patient's rights were not fulfilled.

REFERENCES

- [1] Andrianto, W., Kusumayaningtyas, R. V., & Muthiarani, R. (2021). Hospital Social Function Reviewed from the Health Law (Verdict Analysis No. 381/Pid. B/2014/PN. TK and Baby Debora Case). *SOEPRA*, 7(1), 40-56.
- [2] Dahlan, Sofwan. (2000). *Hukum Kesehatan Rambu-Rambu Bagi Profesi Dokter*, Semarang; Badan Penerbit Universitas Diponegoro
- [3] Jadda, A. A. (2017). Perlindungan Hukum Terhadap Pasien Sebagai Konsumen Jasa Pelayanan Kesehatan. *Madani Legal Review*, 1(1), 1-28.
- [4] Komalawati, Veronica (1991). *Peranan Informed Consent Dalam Transaksi Terapeutik, Suatu Tinjauan Yuridis Persetujuan Dalam Hubungan Dokter Dan Pasien*. Bandung: Citra Aditya Bakti.
- [5] Muchsin, A. (2009). Perlindungan Hukum Terhadap Pasien Sebagai Konsumen Jasa Pelayanan Kesehatan Dalam Transaksi Terapeutik. *Jurnal Hukum Islam*, 7(1).
- [6] Nasution, Bahder Johan. (2005). *Hukum Kesehatan Pertanggungjawaban Dokter*. Jakarta: Rineka Cipta.
- [7] Saputra, D. R., & Suranto, S. (2014). Implementasi Standar Pelayanan Minimal Bidang Kesehatan Di RSUD Kota Baubau. *Journal of Governance and Public Policy*, 1(2).
- [8] Saputra, T. I. (2018). *Pertanggungjawaban Pidana Rumah Sakit Dan Dokter Atas Meninggalnya Pasien Yang Ditelantarkan Rumah Sakit*. Skripsi. Yogyakarta: Fakultas Hukum Universitas Islam Indonesia.
- [9] Soekanto, Soerjono & Mamudji, Sri. (2009). *Penelitian Hukum Normatif Suatu Tinjauan Singkat. Cetakan ke – 11*. Jakarta: PT Raja Grafindo Persada.
- [10] Sungguh, As'ad. (2014). *Kode Etik Profesi Tentang Kesehatan*. Jakarta: Sinar Grafika.
- [11] Supeno, S., Razi, F., & Faradila, F. I. (2021). Pelaksanaan Perjanjian Terapeutik Antara Pasien dengan Rumah Sakit Jiwa Jambi. *Wajah Hukum*, 5(1), 368-373.
- [12] Undang-Undang Nomor 44 Tahun 2009 tentang *Rumah Sakit*
- [13] Undang-Undang Nomor 29 Tahun 2004 tentang *Praktik Kedokteran*
- [14] Undang-Undang Nomor 36 Tahun 2009 tentang *Kesehatan*.