

The Study on the Form of Responsibility of Hospital in Guaranteeing the Fulfillment of the Rights of Patients

Ressy Setiana¹, Teuku Ahmad Yani², Sanusi Bintang³

¹(Magister Law, Faculty of Law/ Syiah Kuala University, Indonesia)

²(Faculty of Law/ Syiah Kuala University, Indonesia)

³(Faculty of Law/ Syiah Kuala University, Indonesia)

Banda Aceh, Indonesia

Abstract:

Discussion: Article 28 H paragraph (1) of the 1945 State Constitution of the Republic of Indonesia stipulates that every person has the right to live in physical and spiritual prosperity, the rights to a place to dwell, and to enjoy a good and healthy environment as well as has the rights to receive medical care. The intended Health service is how the form of hospital services in guaranteeing the fulfillment of the rights of patients such as providing direct action immediately and appropriately to patients in need without the negligence. However, in reality, until today the hospital services have not been better so it is important to study. The problem that is studied is about how the form of responsibility of hospital in guaranteeing the fulfillment of rights of patients so that it does not cause harm to patients. By this research, it is expected that this research can provide concise information about the form of hospital's responsibilities in guaranteeing the fulfillment of the rights of patients.

Materials and Methods: The method used is normative legal research through statute approach and concept approach.

Results: The results indicate that the hospital's responsibility in guaranteeing the fulfillment of patient rights is based on the provisions of article 32 of the law number 44 of 2009 concerning hospitals and it is associated with articles 1365, 1366, and 1367 as well as article 1243 of Civil Code (KUHPerdata). The responsibility of the hospital which due to its negligence is the responsibility based on unlawful acts and the defaults.

Conclusion: The responsibility of the hospital in guaranteeing the fulfillment of the patient's rights in terms of its services which due to the negligence of the hospital is the responsibility based on unlawful acts and the defaults.

Key Word: Responsibility; Hospital; Guarantee; Rights; Patient.

Date of Submission: 18-06-2020

Date of Acceptance: 04-07-2020

I. INTRODUCTION

In the Great Dictionary of Indonesian Language, it states that Responsibility is a condition in which must bear all things, so that person is obliged to bear, to bear responsibility, to bear everything or give responsibility and bear the consequences.¹

The law was created as a means or instrument to regulate the rights and obligations of legal subjects. Besides that, the law also functions as an instrument of protection for legal subjects. According to Sudikno Mertokusumo the law functions as the protection of human interests.

Health is human rights and one of the elements of welfare that must be realized in accordance with the aspiration of the people of Indonesia as referred in Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia. Health is also a basic need of every human being and is the capital of every citizen and every nation in achieving prosperity.²

Every person has the right to obtain health services, and the state is responsible for the fulfillment of health for its people as stated in the provisions of Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that every person has the right to live in physical and spiritual prosperity, the rights to a place to dwell, and to enjoy a good and healthy environment as well as has the rights to receive medical care.

¹<https://www.zonareferensi.com/pengertian-tanggung-jawab/> diakses pada tanggal 16 Desember 2019 pukul 14.00 wib

² Doni firmansyah, *Perlindungan Hukum Terhadap Pasien Pasca Operasi Usus Buntu di Rumah Sakit Karya Medika Bekasi dikaitkan dengan Undang-Undang Nomor 36 Tahun 2009 tentang kesehatan*, Diploma thesis, UIN Sunan Gunung Djati Bandung, 2017. Diakses pada tanggal 17 desember 2019 pukul 15.00 wib.

Article 52 of the Law Number 36 Year 2009 concerning Health states that:

a. Health services consist of:

- 1) Individual health services; and
- 2) Community health services.

b. Health services as referred to in paragraph (1) include activities with promotive, preventive, curative and rehabilitative approaches.

In term of health services as stated in Article 5 paragraph (2) of the Law No. 36 of 2009 on Health, it states that everyone has the right to obtain safe, quality and affordable health services. Article 58 paragraph (1) of the Law No. 36 of 2009 concerning health also explains that each person has the right to claim compensation towards a person, health worker, and / or health provider that causes losses due to errors or negligence in the implementation of health that he receives.³

Hospitals as stipulated in article 1 number (1) of Law No. 44 of 2009 concerning Hospitals, it states that Hospitals are health care institutions that implement the individual health services in complete that provide inpatient care services, outpatient care services and emergency care services. Whereas, according to article 1 number (4) of the Law Number 44 of 2009 concerning Hospitals (UURS), it also states that the patient is every person who do the consultation on his health problems to obtain the necessary health services, both directly and indirectly at the hospital.⁴

The hospital is a legal subject, which means that it can make legal relations with other legal subjects, therefore the hospital has the obligation to bear every risk raised in terms of its services. Specific arrangements regarding hospitals are stipulated by article 20 (1) UURS, based on their management, hospitals can be divided into public hospitals and private hospitals. In Article 20 paragraph (2) of UURS, the public hospital could be managed by Government, Regional Government, and non-profit legal entities. Article 21 of UURS states that private hospital mentioned in article 20 (1) is managed by legal entity with the aim of profit and its form *Perseroan Terbatas* or *Persero*. The hospital is an organization of public service organizers that has public responsibility for every public health service that it provides. The public responsibility of hospital are to organize health services that have quality and are affordable based on the principle of safe, comprehensive, non-discriminatory, participatory and to provide protection for the community as health services users (health receivers), also for the organizers of health services (health receivers) in order to realize the highest degree of health.⁵

Basically, the intended hospital is a public service so that it raises public responsibility, the public responsibility of the hospital as a public service organizers is regulated in Article 15 of Law Number 25/ 2009 on Public Services.

In order to obtain safe and comfortable health services for patients according to the provisions of applicable laws, then hospital will certainly do their best to guarantee the rights of patients such as the form of safety and comfort of its patients who receive both outpatient and inpatient care. Of course, for the sake of the creation of a sense of security and comfort, all elements of the layers that are under the authority of the hospital also contribute to the creation of that condition and are also supported by modern and sophisticated supporting facilities.

The hospital's obligation in providing services to patients is stipulated in article 29 (1) letter b and c UURS, which specifically states that "every hospital has the obligation in providing safe, quality, anti-discrimination and effective health services by prioritizing the interests of patients in accordance with the hospital service standards. And also provide emergency services to patients in accordance with the capabilities of their services", but basically the main foundation for paramedics to be able to do medical actions towards others is the knowledge, technology, and competencies possessed by them, which were obtained through education and training. Their knowledge must be continuously maintained and improved in accordance with the progress of science and technology itself.⁶

The problem of health services that is intended in this study is how the form of hospital services in guaranteeing the fulfillment of the rights of patients like providing the right treatment or services such as direct action immediately and appropriately to patients in need without neglecting so that it doesn't cause losses due to errors or negligence in the implementation of health received by patient.

The legal basis for the civil liability of hospitals in the implementation of health services to patients is the existence of the legal relationship between the hospital as the organizer of health services and patients as users of health services. The legal relationship was created from a legislation regarding health services. The implementation of these rights and obligations encourages the existence of legal protection for patients, considering that the patients are often disadvantaged in health services.

Legal protection for patients is considered necessary to be regulated more deeply and more broadly in the

³Undang-Undang No 36 Tahun 2009 tentang kesehatan

⁴Undang-Undang No 44 Tahun 2009 Tentang Rumah sakit.

⁵ Soerjono dan Herkunto, *Pengantar hukum kesehatan*, Remadja Karya, Bandung, 1987, hal. 131

⁶ Suhardy hetharia, "Aspek Tanggung Jawab Hukum Rumah Sakit Terhadap Pelayanan Medis", *Jurnal Lex et Societatis*, Volume I, Nomor 5, September 2013. Hal 112

laws relating to patients so that legal certainty regarding legal protection for the patients was created.⁷ Based on the problem's background mentioned above, the author is interested to study more deeply about the mentioned problem and to formulate it in the title "Study on the Form of Responsibility of Hospitals in guaranteeing the Fulfillment of the Rights of Patients".

II. MATERIAL AND METHODS

The method used in this paper is normative legal study taken from primary, secondary and tertiary legal material such as textbooks, journal, and other reading material. This paper uses statute approach and concept approach. The collection of legal materials is carried out by the way of searching, systematic classification so that it can answer the problem in this research. The method of approach used in this study is normative juridical or legal study which only researches library material so that it is also called library legal research.⁸

Descriptive research specifications, namely research that in addition to describing the situation, object, or event also certain beliefs will be drawn conclusions from the object of the problem that is associated with legal theories and the practices of positive law related to the problem.⁹ This research was analyzed using *qualitative descriptive* analysis methods.

III. RESULT

The Responsibility of Hospitals in Guaranteeing the Fulfillment of Patient Rights

The Great Dictionary of Indonesian Language defines that the Hospital is, "the building where the sick are treated or the building that provides and gives health services which covers various health problems".¹⁰ Thus, the Hospital is a place to hold one of the health efforts, namely health service efforts.

Lavey and Loomba said that what is meant by health service is every effort, whether carried out alone or together in an organization to improve and to maintain health, prevent disease, treat disease, and recover health which is aimed for individual groups or the community.¹¹

Health services basically aim to carry out the prevention and treatment of diseases, including medical services carried out on the basis of individual relationships between doctors and patients who need healing.¹² Thus, the hospital has an active role in organizing the implementation of health services. On the other hand, health workers (especially paramedics), as one of the main components of health service providers to the community, have an important role because they are directly related to the delivery of health services and quality of services provided.

In the scope of health, both physical and mental health, of course, the policies and regulations are needed on it. Regarding that matter, Indonesia has a special law in the field of health as a validity of health law certainly, as stated in Article 5 paragraph (2) of the Law Number 36 of 2009 concerning Health, which states that "everyone has the right to obtain health services that are safe, quality and affordable." Health law according to H.J.J Lennen is the entire legal provisions directly related to health services and the application of the rules (*kaidah-kaidah*) of civil law, state administrative law, and criminal law in relation to this matter.¹³

Health law includes "*lex specialis*", which specifically protects the duties of the health profession (provider) in the human health service program towards the goals of the Declaration "Health for All" and special protection for patients "receiver" to get the health services.¹⁴ Automatically, this health law regulates the rights and obligations of each service organizer and service recipient, both as individuals (patients) and community groups. The source of health law is not only based on the law, but also on jurisprudence, treaties, consensus, and opinions of legal experts as well as medical experts (including doctrines). Health law if it is seen from the object covers all aspects related to health maintenance (*zorg voor de gezondheid*).

The Law on Hospital was made to guarantee and provide more certainty in the implementation of health in

⁷ Christine Natasha, "Perlindungan Hukum terhadap Pasien atas Wanprestasi dalam Pelayanan Medis (Studi Kasus pada Putusan Pengadilan Negeri Jakarta Pusat No. 396/pdt.g/2008/PN.JKT.Pst)" *Jurnal Diponegoro Law Review*, Volume 5, Nomor 2, 2016. hal 5

⁸ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta, PT Raja Grafindo Persada, 2007, hal 14.

⁹ Ronny Hanitijo Sumitro, *Metode Penelitian Hukum dan Jurimetri*, Jakarta, PT Raja Grafindo Persada, 2007, hal 15.

¹⁰ Amir Ilyas, *Pertanggungjawaban Pidana Dokter Dalam Malpraktik Medik Di Rumah Sakit*, Yogyakarta, Rangkang Education dan Republik Institute, 2014, hal 9.

¹¹ Hendrojono Soewono, *Batas Pertanggungjawaban Hukum Malpraktek Dokter dalam Transaksi Terapeutik*, Srikandi, Surabaya, 2005. hal 100.

¹² K. Bertens. *Etika Biomedis*, Kanisius, Yogyakarta, 2011. hal 133

¹³ Sri Siswati, *Etika dan Hukum Kesehatan dalam Perspektif Undang-Undang Kesehatan*, Rajawali Pers, Jakarta, 2013. hal 13

¹⁴ Cecep Triwibowo, *Etika dan Hukum Kesehatan*, Nuha Medika, Yogyakarta, 2014. hal 16

the Hospital. For patients, the Law on Hospital provides legal certainty that the fulfillment of their rights in health services at the Hospital will be fulfilled, likewise for health workers who work at the Hospital that by the enactment of the Law on Hospital, they will be calmer to work because they are clearly protected by a legal umbrella. Meanwhile, for the Hospital, the Hospital Law provides legal certainty so that the Hospital can carry out its management functions more optimally, can better control and regulate the health services that become its responsibility as well as possible, so that the events that can be detrimental to the patient can be avoided.¹⁵

Legal responsibility in civil law is in the form of responsibility of the person for unlawful act. Unlawful act has wider scope compared to criminal acts. It does not only include the actions that conflict to the criminal law, however in case the actions conflict to the other law even with legal provision that are unwritten. The statutory provisions of the unlawful acts aim to protect and compensate the injured party.

Article 2 of the Law Number 44 of 2009 concerning Hospitals states "Hospitals are based on *Pancasila* and are based on humanity values, ethics and professionalism, benefits, justice, equal rights and anti-discrimination, equity, protection, and patient safety, and also have social function". The hospital must be run by a legal entity (association, foundation or Limited Liability Company).

Protection of patient rights as stipulated in article 32 UURS have several points, namely:¹⁶

- a) Obtaining information regarding the rules and regulations that are applied in hospitals.
- b) Obtaining information on patient rights and obligations.
- c) Obtaining humane, fair, honest and non-discrimination services.
- d) Obtaining health services with quality according to professional standards and standard operational procedures.
- e) Obtaining services which are effective and efficient to prevent physical and material losses towards patients.

Patient rights protection is also stated in Article 32 letter c of the Law on Hospitals (UURS), which states that patients are entitled to receive humane, fair, honest and non-discrimination services. Without discrimination means that every patient is treated equally in all respects without any difference in the services provided by the hospital. In addition, patients are also entitled in obtaining health services that has quality in accordance with professional standards and standards operational procedure in accordance with Article 50 of the Law Number 29 of 2004 concerning Medical Practice. This means that every action carried out must have a good standard in order to avoid from the actions that can be detrimental to the patient, both physical and material. Patients also have the rights to privacy and confidentiality on the suffered disease such as their medical data and to obtain safety as well as security for themselves during the treatment in hospital.¹⁷

The hospital's obligation in providing services to patients is stipulated in Article 29 paragraph (1) letter b and letter c of UURS, which specifically states that "every hospital has the obligation in providing safe, quality, anti-discrimination and effective health services by prioritizing the interests of patients in accordance with the hospital service standards. And also provide emergency services to patients in accordance with the capabilities of their services", but basically the main foundation for paramedics to conduct medical actions towards others is the knowledge, technology, and competencies possessed by them, which were obtained through education and training. Their knowledge must be continuously maintained and improved in accordance with the progress of science and technology itself.¹⁸

The rights and obligations of patients as consumers of health services are based on the existence of a legal relationship between patients and health service providers, in this case is doctors. The relation between patient, doctor and the hospital is known as a contract (*verbinten*). The basis of the contract (*perikatan*) formed between the doctor and the patient is usually an agreement, but a contract can be formed according to the law.¹⁹

According to the Hospital Code of Ethics (Kodersi), responsibilities of hospital include special responsibility and general responsibility. General responsibility of hospital is the responsibility of head of hospital to answer the questions about the events and conditions of the hospital, while special responsibility arises if there is a response that

¹⁵ Dani amalia arifin, "kajian yuridis tanggung jawab perdata rumah sakit akibat kelalaian dalam pelayanan kesehatan", *Jurnal Idea Hukum* Vol. 2 No. 1 Edisi Maret 2016 Magister Hukum Fakultas Hukum Universitas Jenderal Soedirman

¹⁶ <https://www.hukumonline.com/klinik/detail/ulasan/c12431/hak-pasien-atas-pelayanan-kesehatan-di-rumah-sakit>. di akses pada tanggal 18 desember 2019, pukul 20.00 wib.

¹⁷ Bekti Suharto, "Gambaran Pengetahuan Pasien Terhadap Hak dan Kewajiban Pasien SC (Sectio Caesaria) Rawat Inap di RSUD Dr. Moewardi Surakarta Mei Tahun 2014". *IJMS-Indonesian Journal on Medical Science*, Volume 3, Nomor 2, Juli 2016. hal 20

¹⁸ Suhardy hetharia, "Aspek Tanggung Jawab Hukum Rumah Sakit Terhadap Pelayanan Medis", *Jurnal Lex et Societatis*, Volume I, Nomor 5, September 2013. Hal 112

¹⁹ Wila Chandrawila Supriadi, *Hukum Kedokteran*, Mandar Maju, Bandung, 2001, hal. 29.

there is the violation on the rules (*kaidah-kaidah*) both in the field of law, ethics, as well as order and discipline.²⁰

Article 58 paragraph (1) of the Law No. 36 of 2009 concerning health clearly states that “everyone has the right to claim compensation for a person, health worker and / or health organizer that causes loss due to errors or negligence in the implementation of health that she/he receives”. The Law Number 44/ 2009, Article 46 on Hospitals stipulates that “Hospitals are legally responsible for all losses caused due to negligence committed by health workers in hospitals”. Thus, hospital in this case is certainly the role of the doctor as a health worker in the scope of the hospital has an active role in carrying out the implementation of health services. Based on the mentioned provisions, it appears that the prosecution of this compensation, either as a result of an error (intentional) or because of the occurrence of negligence in health services, and the prosecution is directed at someone, health workers, or the organizers (hospital).²¹ For the existence of obligation on compensation for the organizer, the law stipulates that it must first be declared in a condition of neglect.²²

According to civil law, every action that is contrary to law must be accounted for a number of losses suffered by another party, an action according to the development of legal science, especially through jurisprudence, not only includes actions that are contrary to the law and rights of other parties, but also every action that is contrary to propriety in social relations, both in relation to personal and other people's property. A process of responsibility for paying compensation is usually associated with certain things that become the causing factors of the loss, namely the existence of the element of error on the part of the doer.²³

The Civil Code creates responsibility of civil law based on the defaults and unlawful acts. Defaults begin by an agreement that creates rights and obligations, if in a legal relationship based on the agreement, the party that violates the obligation (the debtor) does not carry out or violates the obligations imposed on him/her then he/she can be considered negligent (default) and on that basis he/she can be asked for legal responsibility based on the default. While civil law responsibility that is based on unlawful acts is based on the existence of legal relations, rights and obligations that originate from the law.²⁴

If we see from the legal perspective, the relations between patients and doctors within the scope of the legal agreement. It is said to be an agreement because of the ability of doctors to strive for the health and healing of patients.²⁵ Basically, the mistakes or negligence of doctors in carrying out the medical profession within the scope of the aegis of the hospital, is an important thing to talk about. This is because the result of errors or negligence has a detrimental impact. Besides damaging or reducing community trust on the medical profession and the quality of hospital services, it also causes the loss to patients.²⁶

Agreement that was not implemented will lead to defaults. The definition of default is condition of unimplemented performance (*prestasi*) due to the debtor's mistake either intentionally or negligently. Which in this case the doctor is the debtor, while the patient is the creditor. To be able to say there is the occurrence of default can be seen from R. Subekti's opinion which states that the default can be grouped into 4 (four) forms, namely; first: not doing what is supposed to be done. Second: carry out what was promised but not as promised. Third: do what has been promised but it is too late in the time of its implementation. Fourth: do something that is not permitted in the agreement.²⁷

The default in medical services regarding the form of responsibility of the hospital towards the rights of patients is to pay compensation as stipulated in article 1243 of the civil code which states that “reimbursement of costs, the losses, and interest due to the non-fulfillment of a contract, only then begin to be required, if the debtor after

²⁰Elmas Dwi Ainsiyah, “Perlindungan Hukum bagi Pasien Pengguna Jamkesmas dalam Pelayanan Kesehatan di RSUD Dr. Djoelham Binjai terkait berlakunya BPJS dibidang kesehatan”, tesis program pascasarjana fakultas hukum universitas sumatera utara, Medan, 2015. USU law Journal Volume.3 No. 3. Edisi November 2015, hal. 151

²¹Setya Wahyudi, “Tanggung Jawab Rumah Sakit Terhadap Kerugian Akibat Kelalaian Tenaga Kesehatan Dan Implikasinya”, *Jurnal Dinamika Hukum* Fakultas Hukum Universitas Jenderal Soedirman Volume 11 No.3, 2011. hal. 487

²²Sedyo Prayogo, “Penerapan Batas-Batas Wanprestasi dan Perbuatan Melawan Hukum dalam Perjanjian”, *Jurnal Pembaharuan Hukum*, Volume III, Nomor 2, Mei - Agustus 2016. hal 284

²³Hanifah Romadhoni dan Arief Suryono, “Pertanggungjawaban Perdata Rumah Sakit Dalam Hal Penolakan Pasien Miskin Pada Keadaan Gawat Darurat”, *Jurnal Privat Law* Volume VI, Nomor 2, Juli-Desember 2018. hal 227

²⁴Djojodirdjo, Moegni, Perbuatan melawan hukum: tanggung gugat (*aansprakelijkheid*) untuk kerugian, yang disebabkan karena perbuatan melawan hukum, Jakarta: Pradnya Paramita, 1979, hlm. 55

²⁵Bahder johan nasution, *hukum kesehatan: pertanggung jawaban dokter*, cetakan I, PT. Rineka jaya, Jakarta, 2005. hal 6

²⁶*Ibid*, hal. 5

²⁷<http://www.litigasi.co.id/ kapan-seorang-dikatakan-wanprestasi/> diakses pada tanggal 20 desember 2019 pukul 10.00 wib.

being declared negligent in fulfilling the agreement, still neglect it, or if something must be given or made, can only be given or made within the grace period that has been exceeded.”

Hospitals and Patients who incur losses because negligence in services of hospitals, both of them include as legal subjects that can be subjected to rights and obligations. The law governing the relation between one legal subject and another is a private law (civil law) in which realm is the protection of rights. Then the law governing this legal event is *KUHPerdata*. Because of the emergence of rights and obligations regarding this matter, the legal responsibility that is directed to the hospitals as providers of health services does not abort the legal responsibilities of health workers who commit negligence in health services. Health workers, who commit negligence resulting in losses for patients in the Hospital's services, still include as subject to law responsibility, as regulated in Article 1365 of the civil code.

Article 1365 of the Civil Code which states that “every act that violates the law, which brings the loss to another person, obliges the person who do mistake and because of his mistake then the loss is created, to compensate for the loss”. Article 1365 of the Civil Code contains provisions that there is a causal relationship between acts and losses. In terms of juridical perspective, the concept of compensation in the law is known in two areas of law, namely as follows: a. The concept of compensation due to default; b. The concept of compensation due to an agreement based on the law includes compensation due to unlawful acts.²⁸

Article 1366 of the Civil Code also states “everyone is responsible not only for losses caused by his actions, but also for losses due to negligence or carelessness”. In addition, unlawful acts which are the basis of the hospital's responsibility in guaranteeing the rights of patients are listed in article 1367 of the Civil Code which states that “a person is not only responsible for the losses caused by his own actions but also for the losses caused by the actions of people under his supervision”. In this case article 1367 paragraph (3) is more appropriate in the case of hospital services to patients as it states that “Employers and those who appoint others to represent their affairs are responsible for the losses caused by their servants or their subordinates in carrying out the work for which these people are employed.”

Article 1367 of the Civil Code can be used as a reference for the hospital's responsibility on the actions of the health worker. This is in accordance with the doctrine of *respondeat superior*. This doctrine contains the meaning that the employer is responsible for the actions of the servants for whom he is responsible, including those actions which cause the losses to others. The doctrine of *respondeat superior* guarantees that the compensation is given / is paid to patients suffering medical treatment losses. In addition, the doctrine of *respondeat superior* in law and justice wants the attitude of prudence from health workers.²⁹

IV. CONCLUSION

The responsibility of the hospital in guaranteeing the fulfillment of the rights of patients is based on the provisions of article 32 of the law number 44 of 2009 concerning hospitals and is associated with articles 1365 of the Civil Code, 1366 of the Civil Code and 1367 of the Civil Code and article 1243 of the Civil Code. The responsibility of the hospital in terms of guaranteeing the fulfillment of the patient's rights in its services which due to negligence of the hospital is the responsibility based on unlawful act and default.

Legal responsibility addressed to hospitals as providers of health services does not abort legal responsibilities from health workers who commit the negligence in health services. Health workers who commit negligence resulting in losses for patients in health services at the Hospital are still subjected to legal responsibility, as regulated in Article 1365 of the Civil Code which states that “every act that violates the law, which brings the loss to another person, obliges the person who do mistake and because of his mistake then the loss is created to compensate for the loss ”.

Article 1366 of the Civil Code also states that “everyone is responsible not only for losses caused by his actions, but also for losses due to negligence or carelessness”. In addition, unlawful acts that become the basis of the hospital's responsibility in guaranteeing the rights of patients mentioned in *KUHPerdata*, article 1367, can be reference to hospital's responsibility for the actions of the health worker. This is in accordance with the doctrine of *respondeat superior*. This doctrine contains the meaning that the employer is responsible for the actions of the servants for whom he is responsible, including those actions which cause the losses to others. The doctrine of *respondeat superior* guarantees that the compensation is given / is paid to patients who suffer losses due to medical treatment. In addition, the doctrine of *respondeat superior* in law and justice wants the attitude of prudence from health workers.

Article 58 paragraph (1) of the Law No. 36 of 2009 concerning health states that “every person has the right to claim compensation towards a person, health worker, and / or health provider that causes losses due to errors or negligence in the implementation of health that he receives.” Article 46 of the Law Number 44 of 2009 concerning Hospitals states that “Hospitals are legally responsible for all losses caused due to negligence committed by health

²⁸ Munir Fuady, *Perbuatan Melawan Hukum Pendekatan Kontemporer*, Citra Aditya Bakti, Bandung, 2013. hal. 134.

²⁹ Syahrul Machmud, *Penegakan Hukum dan Perlindungan Hukum Bagi Dokter yang Diduga Melakukan Medikal Malpraktek*, Mandar Maju, Bandung, 2008. hal. 105

workers in hospitals". Thus, the hospital party which in this case is certainly the role of the doctor as a health worker in the scope of the hospital has an active role in carrying out the implementation of health services. Based on the mentioned provisions, it appears that the prosecution of this compensation, either as a result of an error (intentional) or because of the occurrence of negligence in health services, and the prosecution is directed to someone, health workers, or the organizers (hospital). For the existence of obligation on compensation for the organizer, the law stipulates that it must first be declared in a condition of neglect.

REFERENCES

- [1]. Amir Ilyas, *Pertanggungjawaban Pidana Dokter Dalam Malpraktik Medik Di Rumah Sakit*, Yogyakarta, Rangkang Education dan Republik Institute, 2014.
- [2]. Bahder johan nasution, *hukum kesehatan: pertanggung jawaban dokter*, cetakan I, PT. Rineka jaya, Jakarta, 2005.
- [3]. Bekti Suharto, "Gambaran Pengetahuan Pasien Terhadap Hak dan Kewajiban Pasien SC (Sectio Caesaria) Rawat Inap di RSUD Dr. Moewardi Surakarta Mei Tahun 2014". *IJMS-Indonesian Journal on Medical Science*, Volume 3, Nomor 2, Juli 2016
- [4]. Cecep Triwibowo, *Etika dan Hukum Kesehatan*, Nuha Medika, Yogyakarta, 2014
- [5]. Christine Natasha, "Perlindungan Hukum terhadap Pasien atas Wanprestasi dalam Pelayanan Medis (Studi Kasus pada Putusan Pengadilan Negeri Jakarta Pusat No. 396/pdt.g/2008/PN.JKT.Pst)" *Jurnal Diponegoro Law Review*, Volume 5, Nomor 2, 2016
- [6]. Dani amalia arifin, "kajian yuridis tanggung jawab perdata rumah sakit akibat kelalaian dalam pelayanan kesehatan", *Jurnal Idea Hukum* Vol. 2 No. 1 Edisi Maret 2016 Magister Hukum Fakultas Hukum Universitas Jenderal Soedirman
- [7]. Djojodirdjo, Moegni, *Perbuatan melawan hukum: tanggung gugat (aansprakelijkheid) untuk kerugian, yang disebabkan karena perbuatan melawan hukum*, Jakarta: Pradnya Paramita, 1979.
- [8]. Elmas Dwi Ainsiyah, "Perlindungan Hukum bagi Pasien Pengguna Jamkesmas dalam Pelayanan Kesehatan di RSUD Dr. Djoelham Binjai terkait berlakunya BPJS dibidang kesehatan", tesis programa pascasarjana fakultas hukum universitas sumatera utara, Medan, 2015. *USU law Journal* Volume.3 No. 3. Edisi November 2015.
- [9]. Hanifah Romadhoni dan Arief Suryono, "Pertanggungjawaban Perdata Rumah Sakit Dalam Hal Penolakan Pasien Miskin Pada Keadaan Gawat Darurat", *Jurnal Privat Law* Volume VI, Nomor 2, Juli-Desember 2018.
- [10]. K. Bertens. *Etika Biomedis*, Kanisius, Yogyakarta, 2011.
- [11]. Munir Fuady, *Perbuatan Melawan Hukum Pendekatan Kontemporer*, Citra Aditya Bakti, Bandung, 2013.
- [12]. Ronny Hanitijo Sumitro, *Metode Penelitian Hukum dan Jurimetri*, Jakarta, PT Raja Grafindo Persada, 2007.
- [13]. Sedyo Prayogo, "Penerapan Batas-Batas Wanprestasi dan Perbuatan Melawan Hukum dalam Perjanjian", *Jurnal Pembaharuan Hukum*, Volume III, Nomor 2, Mei - Agustus 2016.
- [14]. Setya Wahyudi, "Tanggung Jawab Rumah Sakit Terhadap Kerugian Akibat Kelalaian Tenaga Kesehatan Dan Implikasinya", *Jurnal Dinamika* Hukum Fakultas Hukum Universitas Jenderal Soedirman Volume 11 No.3, 2011.
- [15]. Soekidjo Notoatmodjo, *Etika dan Hukum Kesehatan*, Rineka Cipta, Jakarta, 2010.
- [16]. Soerjono Seokanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta, PT RajaGrafindo Persada, 2007.
- [17]. Sri Siswati, *Etika dan Hukum Kesehatan dalam Perspektif Undang-Undang Kesehatan*, Rajawali Pers, Jakarta, 2013.
- [18]. Suhardy hetharia, "Aspek Tanggung Jawab Hukum Rumah Sakit Terhadap Pelayanan Medis", *Jurnal Lex et Societatis*, Volume I, Nomor 5, September 2013.
- [19]. Syahrul Machmud, *Penegakan Hukum dan Perlindungan Hukum Bagi Dokter yang Diduga Melakukan Medikal Malpraktek*, Mandar Maju, Bandung, 2008.
- [20]. Wila Chandrawila Supriadi, *Hukum Kedokteran*, Mandar Maju, Bandung, 2001.

Ressy Setiana, et. al. "The Study on the Form of Responsibility of Hospital in Guaranteeing the Fulfillment of the Rights of Patients." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(7), 2020, pp. 40-46