

Hospital Criminal Law Refusing Emergency Patient Medical Services

Dedet Steavanno¹, Zudan Arief Fakrulloh², Herman Bakir³
{dedetsteavano715@gmail.com¹, celsis@yahoo.com¹, herman_bakir@borobudur.ac.id³}

Universitas Borobudur, Indonesia

Abstract. According to Article 28 H paragraph 1 of the 1945 Constitution, "Everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy living environment and has the right to obtain health services," everyone has the right to receive health services in accordance with their requirements. When viewed in terms of the use of hospitals, it is to treat and provide first aid services to the community as patients who need good care in an emergency or to maintain health, therefore hospitals must provide optimal services using hospitals. However, there are still instances in which hospitals refuse to provide health services, such as to poor patients or patients who require first aid. If a hospital refuses to provide medical care to an emergency patient, the hospital as a legal entity is liable for the consequences, which could include jail time for hospital administrators or fines for the hospital's director and/or health care workers. According to corporate responsibility, management is accountable and the corporation is the manufacturer. 2) Article 304 and Article 531 of the Criminal Code are two criminal provisions that can be used against hospitals that refuse to treat emergency patients. in addition to the criminal provisions of Health Law 36 of 2009, Article 190, paragraphs 1 and 2.

Keywords: Criminal Law, Hospital, Medical Services, Refusing Emergency Patient

1 Introduction

One of the significant rules that should be safeguarded by Indonesia as a condition of the law is Common freedoms (HAM). The Indonesian constitution's Article 28 H paragraph 1 states that health is one of the most important human rights: "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and have the right to health services." As an element of human rights, the fulfilment of health for the community is the main thing that must be fulfilled by the state for its people. One form of fulfilling good health quality for the community is to provide quality and affordable health services to realize the highest degree of health.

Law No. 36 of 2009 on Health, hereinafter referred to as the Health Law, is the format in which regulations governing health services are implemented. This regulation is another wellbeing guideline that replaces Regulation Number 23 of 1992 concerning Wellbeing which has been repudiated and pronounced presently not substantial. According to Article 2 of Health Law No. 36 of 2009, the state is obligated to implement the health development principles outlined in this Health Law, namely:

"Health development is carried out based on the principles of humanity, balance, benefit, protection, respect for rights and obligations, justice, gender, and non-discrimination and religious norms"

According to Article 34 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, "The State is responsible for the provision of health service facilities and proper public service facilities," the government's role in health services is just as crucial as it is in other areas of public administration". Health services are related to health service agencies, namely hospitals. The existence of an adequate hospital that can provide good and non-discriminatory health services so that it can cover all groups of people, not only a certain group of influential people but including those who are not able to enjoy medical services in conditions that are needed.

Since pre-Industrial society, hospitals were religious or charitable institutions, which cared for the sick.[1] Until around 1960, when the hospital is purely for charity (charity). Currently hospitals are free from lawsuits. They could be said to be above the law because the money obtained from donations has a specific purpose to help human suffering who is sick without expecting to receive anything in return. The ancient mind still pure thought that the money received from donations was to help fellow humans who were sick. At that time it was not in the patient's mind to sue the hospital or the doctor if anything unexpected happened. This has been accepted as a destiny ordained by God. [2]

The advancement of medicine-related science and technology whose application is carried out in hospitals has made hospital management more complex. The community is increasingly critical of the treatment services provided. So it is necessary to prepare steps against the legal impact that may arise on hospital management due to civil and criminal demands from patients. [3]

In Indonesia, laws and regulations govern hospitals as health service agencies, specifically The Hospital Law, or Law No. 44 of 2009 Concerning Hospitals, is referred to below. Hospitals are made legal entities with responsibilities and rights by this legislation, which makes them legal subjects (also known as "recht persons"). As a result, the hospital is legally liable for any and all losses resulting from medical staff negligence. From a management perspective, every organization, including hospitals, needs to have a top leader with the most authority and responsibility. [3]

In general, Articles 29 and 30 of Chapter VIII of Law Number 44 of 2009 Concerning Hospitals list the rights and responsibilities of hospitals. Additionally, it is outlined in the 2000 Indonesian Hospital Code of Ethics (KODERSI). Article 32 of Health Law No. 36 of 2009 sets out the rules for hospitals' health service provision.

Article 32 of Law Number 36 of 2009 concerning Health

- (1) In an emergency, both public and private health care facilities must prioritize providing health care to save the patient's life and prevent them from becoming disabled.
- (2) The government and the private sector cannot refuse a patient or request a down payment in the event of an emergency health care facility.

It has been emphasized that everyone has the right to receive medical care in accordance with the mandate of Article 28 H paragraph 1 of the Republic of Indonesia's 1945 Constitution. "The State is responsible for the provision of proper health service facilities and public service facilities," reads Article 34 paragraph 3". "Hospitals are organized based on Pancasila and are based on human values, ethics and professionalism, benefits, justice, equal rights and anti-discrimination, equity, protection and safety," states Article 2 of Law Number 44 of 2009 concerning Hospitals. patients and serves a social purpose.

What is meant by "human values" is that the operation of hospitals is carried out by providing good and humane treatment without discriminating against ethnicity, religion, nation, social status, or race. While the meaning of "ethical and professional values" is that the operation of the hospital is carried out by health workers who have professional ethics and professional attitudes, and comply with hospital ethics.

The targets of the association of the emergency clinic are directed in Article 3 of Regulation Number 44 of 2009 concerning Medical clinics, specifically:

- a. Make health care more accessible to the general public;
- b. ensure the safety of patients, the community, the hospital environment, and human resources;
- c. Upholding high service standards and improving quality; and d. Provide patients, communities, hospital staff, and hospitals with legal certainty.

There are still many hospitals that do not carry out their obligations as stated in the legislation or the Hospital Code of Ethics. One of the obligations that are not carried out by hospitals is to provide medical services to emergency patients without requiring advance payment. Commonly for hospitals to provide emergency services requiring patients to first complete administration which is closely related to advance payments or guarantees for medical expenses. Even if the patient cannot complete the administrative requirements, Emergency patients are not offered medical care by the hospital. This refusal is usually accompanied by various reasons, one of which is the unavailability of empty treatment rooms or the absence of medical personnel or doctors who can treat patients.

The hospital's refusal to treat emergency patients is evidence of inadequate patient health care. Since the clinic has been viewed as a legitimate subject (recht individual) as a lawful substance and has freedoms and commitments, the emergency clinic can be considered criminally mindful in the event that an unlawful demonstration happens. One example is when a hospital refuses to treat an emergency patient or requests an advance payment from the patient before treating them. All of the repercussions that result from the hospital's failure to fulfill its responsibilities to provide health services are the responsibility of the hospital as an institution.

2 Method

The normative juridical approach is used in this study, Soerjono Soekanto says so The normative juridical approach begins with secondary data or library materials and searches for relevant regulations and literature. [4] In this legal study, the author tries to look at the laws and regulations that pertain to the subject at hand, specifically the criminal liability of hospitals that deny emergency patients medical treatment.

Secondary data sources are used in normative juridical research. In this type of normative juridical research, data derived from legal materials, such as primary, secondary, and tertiary legal materials, are referred to as secondary data.[5]

The following legal materials were used as secondary data in this thesis to analyze legal issues:

- a. Primary Legal Materials, also known as legally binding documents like laws and regulations, jurisprudence, treaties, civil agreements of the parties, and others related to the sale and purchase agreements.[6] This study primarily relied on legal documents like:
 - 1) Indonesia's 1945 Constitution;
 - 2) Law No. 1 of 1946 on Criminal Law Regulations;

- 3) Law No. 29 of 2004 on Medical Practice;
 - 4) Law No. 36 of 2009 on Health;
 - 5) Law No. 44 of 2009 on Hospitals;
 - 6) Regulation No. 69 of 2014 on Patient Rights and Obligations by the Minister of Health of the Republic of Indonesia; and
 - 7) Indonesian Hospital Code of Ethics (KODERSI) of 2000
- b. Documents that explain fundamental legal documents, such as draft laws, research findings, or legal expert opinions, are referred to as secondary legal materials.[7]
 - c. Tertiary Legal Materials are legal resources like dictionaries (in English, Indonesian, and law) and encyclopedias that guide users through primary and secondary legal resources. [8]

3 Result and Discussion

Criminal Liability of Hospitals that Refuse to Provide Medical Services

The hospital is essentially an organization formed by a legal entity, be it the Government, Perjan, Foundation, Limited Liability Company, or Association. One of the principles of every organization is the element of authority. From a management point of view, every organization, including hospital organizations, must have a top leader who bears the highest responsibility and authority. In Indonesia, this factor now needs to be considered, because the corporation is recognized as a subject of criminal law. So that legal entities can be criminally prosecuted as well as legal entities that establish hospitals are also subject to criminal law.

As explained earlier, in the past, hospitals could not be prosecuted or held legally responsible, both civil and criminal when there were patients who felt aggrieved by the hospital's actions. This is because the hospital is protected by the doctrine of the charitable community. The application of the charitable community doctrine by the courts in the United States is supported by three theories. The first theory is the theory of trust (trust theory) which states that funds managed by a charitable institution only aim to help sufferers. If the funds are used to pay compensation, the purpose has been misused because it is enjoyed by individual patients. The second theory, namely the implied waiver theory, states that patients voluntarily seek treatment and are hospitalized and are borne by funds originating from donations so that the patient is considered to have automatically renounced his right to claim compensation in the event of an accident. The third theory is the respondent superior theory. The theory states that employers are responsible for the results of their subordinates' work or employees if it is carried out to fulfill the interests of the superior or employer. Since charitable institutions are non-profit-seeking organizations, the hospital cannot be held responsible for the actions of subordinates. Thus, the court's direction in limiting the hospital's responsibilities is based on the public interest.

Along with the times, according to the court, the doctrine of respondent superior is based on solid principles of law and justice regarding legal responsibility so impunity is an exception. It is appropriate that the officer in charge of the public interest be careful. The court also stated that caution is not only a moral thing, yet it is also the correct law. It should apply to both individuals and organizations in which no reason to exclude charitable institutions such as

hospitals from that responsibility. Giving alms is indeed a noble activity, but it should not be done if caution is forgotten. So based on this, the application of respondent superior theory has two main objectives, namely:

- 1) There is a guarantee that compensation is paid to the patient
- 2) Bearing in mind that law and justice require carelessness.

Hospitals are seen as a legal entity with rights and responsibilities, so they can be held accountable for illegal acts, particularly criminal liability. When their responsibilities for providing health services are breached, hospitals bear full responsibility for any and all consequences..[9] The hospital must provide health workers, with the availability of health service facilities and facilities that are ready to use. In addition, the hospital is responsible for the maintenance of all healthcare facilities and facilities. In this case, the hospital's responsibilities can be based on:

- 1) Violation of obligations by health workers
- 2) a violation of hospital's duties, Hospitals are responsible for equipping all necessary equipment for the diagnosis and therapy of patients.

Thus the violation of obligations by health workers will give birth to the responsibility of health workers. Meanwhile, the violation of hospital obligations will give birth to the responsibility of the hospital in providing facilities and facilities. On this basis, the legal responsibility in health services is borne by health workers and hospitals.

One of the obligations that are not carried out by hospitals is to provide medical services to emergency patients without requiring advance payment. What often happens is that hospitals providing emergency services require patients to first complete the administration which is closely related to advance payments or guarantees for medical expenses. Even if the patient cannot complete the administrative requirements, the hospital refuses to provide medical services to emergency patients. This refusal is usually accompanied by various reasons, one of which is the unavailability of empty treatment rooms or the absence of medical personnel or doctors who can treat patients. So that providing referrals to other hospitals is an alternative or step given to patients to get further health services.

There are quite many cases of refusal of emergency patients carried out by hospitals. It is proven by many media reporting cases like this. Among them are cases that the author has raised in the background of the problem. Namely, the case of the death of baby Tiara Debora Simanjorang on September 3, 2017, because she did not receive serious treatment by the Mitra Keluarga Kalideres Hospital, West Jakarta to save her life of baby Debora. A similar case occurred in Aceh on March 28, 2016, where the patient Suryani did not immediately receive medical services to assist her delivery at the Mother and Child Hospital (RSIA) Banda Aceh. While in the delivery room, the period is more than 6 (six) hours, namely from 06.00. to 13.00, the patient Suryani's husband did not catch any proper and reasonable medical efforts that should be carried out by the medical officer, and he did not see the presence of the doctor on duty. In the end, the patient Suryani is given a referral to another hospital instead.

As stated in the preceding instances, the hospital's refusal to treat patients in need of medical care harms its reputation as a provider of Indonesian healthcare. Without regard to a patient's financial situation, All residents reserve the privilege to medical care in the nation and the state. In particular, as per Wellbeing Regulation No. 36 of 2009, which peruses as follows: Everyone has the right to health care that is affordable, safe, and of high quality.

It is illegal for hospitals to deny emergency patients medical attention for a variety of reasons. The refusal of patients by hospitals is not done openly, but for various reasons, the hospital rejects patients who are less well off financially. The refusal of medical services to

emergency patients violates the provisions of Article 32 of Law Number 36 of 2009 concerning Health, namely:

- 1) Health care providers, both public and private, are obligated in an emergency to prioritize saving the patient's life and preventing disability.
- 2) Both the public and private sectors cannot refuse a patient or request a down payment in the event of an emergency health care facility.

In light of the dismissal of clinical benefits for oppressed patients, this shows that the public authority in overseeing and encouraging the specialized execution unit of wellbeing administrations is not exactly ideal so there are still dismissals of clinical benefits did by clinics because of multiple factors, as ordered by Regulation No. 36 of 2009 concerning Wellbeing Article 14 passage (1), which reads: "The government is responsible for planning, regulating, organizing, fostering and supervising the implementation of health efforts that are evenly distributed and affordable by the community."

The hospital's legal responsibility is regulated in Article 46 of Law Number 44 of 2009 concerning Hospitals which states "Hospitals are legally responsible for all losses caused by negligence committed by health workers in hospitals". If you look closely, this article shows that all losses incurred by the hospital are due to actions taken by health workers because of their negligence. The actions of medical workers that can be accounted for by the hospital are all health actions, both on behalf of and without acting on behalf of the patient.

It is stated in Article 14 and Article 16 of Law Number 36 of 2009 pertaining to Health that the government is accountable for improving the community's health. The regulation, encouragement, and supervision of health initiatives are among the responsibilities of the government. Health initiatives and resources are regulated by the government under these provisions.

The implementation of health is influenced by health resources, particularly health workers and health facilities. The readiness and availability of health professionals, in this case doctors and nurses, has an impact on how health services are implemented in hospitals. The authority possessed by these doctors and nurses is related to their readiness to carry out the aforementioned duties in the field of health services. The responsibility for implementation will emerge as a result of the authority's implementation. As a result, doctors and nurses' legal responsibility is to be prepared to carry out the tasks assigned to them by the health service.

It is the responsibility of the doctor when carrying out his duties in a government hospital, the government (in this case as his superior) is also responsible. The responsibility of superiors for the actions of doctors according to Dalmy Iskandar is based on the consideration that the doctor works for and on behalf of the hospital in question, and in carrying out his work is bound by the existing work regulations at the hospital.

Doctors and nurses working in public hospitals as described above are employees who are paid by the hospital and are public servants who exercise the rights and duties of the institution, not the rights and duties of the institution. Status of the hospital as a legal entity. These rights and responsibilities are not those of institutions; rather, they are those of the state as a legal entity. As a result, doctors who work in government hospitals do not carry out the rights and responsibilities of the apparatus; rather, they do so in accordance with the rights and responsibilities of hospitals as public legal entities. because the hospital bears responsibility for all actions resulting from rights and obligations. Errors and omissions can generally be attributed to the hospital as a legal entity, namely:

- a. If there is a decision/instruction from the management to give their duties and as a result of the decision, a case occurs. In this case, the author can give examples of cases of refusal of medical services to emergency patients. If the health worker in this case is a doctor,

nurse, or another officer who does not provide medical services before the patient completes the administrative costs that require a down payment. As the provision has become a rule set by the hospital which is usually stated in the Articles of Association and Bylaws (AD/ART) of the hospital doctors, nurses, or other hospital staff are required to carry out the rules that have been determined. So in this case, the responsibility of the doctor, nurse, or other officers in the hospital can be borne by the hospital.

- b. If there is no decision/instruction from the management, then the error/omission can be blamed on the Director of the hospital, as long as it can be proven that he has exceeded the limit of authority given to him. Or that he had made a gross mistake that he should have known and not committed.
- c. The management can also be blamed if he knows, but does not prevent it, even has accepted the action that contains the element of error/omission.
- d. If a hospital conducts experiments that are against the law, the hospital can be held criminally responsible.
- e. The hospital (Director) in certain cases can be held criminally responsible if he in ordering something knows or should know that the instruction contains a serious risk for third parties. One example includes if hospital regulations require an advance payment before providing services to emergency patients. But of course, all of these cases must be investigated.

The Indonesian laws and regulations serve as the foundation for hospital duties. This hospital law includes legal rules regarding hospitals and service providers in hospitals by health workers and their legal consequences. Thus, the responsibility of the hospital cannot be separated from the relationship between patients, health workers (in this case doctors and nurses or other officers), and the hospital.

In addition, a lot of authority is delegated when carrying out tasks in hospitals. As a result, the hospital's responsibilities can be broadly divided into three categories when viewed from the perpetrators' point of view:

- a. Responsibilities in the hospital's field; the head of the hospital (the Director) is in charge.
- b. Each member of the hospital's medical staff is the responsibility of the medical field in charge.
- c. Nursing responsibilities: at the hospital, the person in charge is the nurse, midwife, and non-care medic.

The legal responsibility of the hospital is related to the obligation to provide care (duty of care). Care must be taken so that other people, in this case, the patient, do not suffer unnecessary losses or injuries. A doctor is considered responsible for professional mistakes if his attitude and actions do not comply with professional standards so that the patient suffers an injury and even death. Likewise, the hospital is considered responsible if the obligation to provide good service is not by the hospital's medical service standards. Thus, a provision that hospitals must provide health services to patients must be maintained so that these functions are carried out. According to the Indonesian Hospital Code of Ethics (KODERSI) in 2000, the hospital's obligations are:

- a. Liabilities to the general public On an ongoing basis, hospitals must place a higher priority on providing high-quality services than on costs. A comprehensive service implementation that is closely linked to one another in such a way that hospital services are carried out is known as good, quality, and sustainable service.
- b. Obligations to society. Hospitals must constantly adapt their service policies to the expectations and needs of the local community. Hospital service policies must always be

oriented to the needs of the local community, and considered, among other things, the socio-economic level of the community, education level, community culture, population composition, disease patterns, and so on.

- c. Responsibilities to patients. Hospitals must respect the rights of patients. Patient rights are fundamental rights that patients have as God's creatures, especially those relating to rights related to hospital services.
- d. Obligations of health workers who work in hospitals. Hospitals must ensure that their leaders, staff, and employees always comply with their respective professional ethics. The hospital's important task is to foster a managerial climate that is conducive to the education and training of employees' personalities. Hospitals must conduct a selection of staff for doctors, nurses, and other personnel based on values, norms, and labor standards. The hospital must ensure that good coordination and relationships between all personnel in the hospital can be maintained. Hospitals must provide opportunities for all hospital staff to improve and add to their knowledge and skills.
- e. Obligations to related institutions. Hospitals must maintain good relationships with owners based on the values and ethics that apply in Indonesian society.

Hospital responsibility is based on the corporate liability doctrine as stipulated in Article 46 of Law Number 44 of 2009 concerning Hospitals states that: "Hospitals are legally responsible for all losses caused by negligence committed by health workers in hospitals". If you look closely, this article shows that all losses incurred by the hospital are due to actions taken by health workers because of their negligence.

Based on the explanations that the author has put forward above, the act of refusing medical services carried out by the hospital for emergency patients, then the full criminal responsibility is the head of the health facility if on the order of the position because in the hospital there must be a leader (Director) or responsible medical personnel. If the person who refuses medical services to an emergency patient is only an ordinary employee who is not a health worker (doctor) in the hospital, then the criminal responsibility is also on the head of the health facility or medical personnel, because all orders made by the employee or subordinate are all considered at the will of the head of the health facility or medical personnel if it is in the name of an office order regulated in the Act. And if the order is in the personal name then the employee's staff can also be charged with criminal liability. Law Number 36 of 2009 pertaining to Health regulates the penalties for leaders of health facilities (hospitals) and/or health workers who deny emergency patients medical care. Additionally, the author will go into detail about the criminal arrangements that can be applied to emergency clinics that deny emergency patients medical treatment in the following discussion.

Explicitly the forms of criminal sanctions are listed in Article 10 of the Criminal Code. These forms of criminal sanctions also apply to offenses listed outside the Criminal Code, unless the provisions of the law deviate. The criminal sanctions in Article 10 of the Criminal Code are:

- 1) Basic Criminal
 - a. death penalty;
 - b. imprisonment;
 - c. Criminal Cage: V; and
 - d. Criminal fines.
- 2) Additional Criminal
 - a. Revocation of certain rights;
 - b. confiscation of certain goods; and
 - c. Announcement of judge's decision.

The action of the hospital that does not provide good service according to the author can be said that the hospital does not carry out its obligations as contained in the arrangements of Article 29 passage (1) of Regulation Number 44 of 2009 concerning Clinics. One of the actions of a hospital that does not carry out its obligations is to provide emergency services by requiring advance payment, and if the patient cannot fulfill the down payment or does not have a guarantee, the patient will not be given service or be rejected by the hospital. Whereas in its provision that hospitals providing emergency services may not require advances or guarantees to be made to patients. Hospital actions that do not carry out their obligations will be likely to sanctions as specified in Article 29 passage (2) of Regulation Number 44 of 2009 concerning Emergency clinics. Whereas: "Violations of the obligations as referred to in paragraph (1) are subject to administrative sanctions in the form of":

- a. rebuke;
- b. written warning; or
- c. Fines and revocation of hospital permits.

Thus, according to the Criminal Code, it is distinguished into the main and additional penalties. The main and additional penalties are further divided into several types as mentioned above. The criminal order is based on the severity of the criminal sanctions. The heaviest penalty is placed at the top, such as the death penalty, while the lighter the death penalty, imprisonment, is placed in second place. Thus, the sequence ends with the lightest punishment. The main punishment is fine, while the additional punishment is in the form of announcing the judge's decision.

4 Conclusion

Clinics that will not offer clinical types of assistance to crisis patients are illegal and are criminal demonstrations. Since this has been controlled in the arrangements of Regulation Number 36 of 2009 concerning Wellbeing. The clinic authority (Chief) or potentially medical care laborers in the medical clinic might confront criminal authorizations as fines for clinics and additionally detainment for emergency clinic overseers for declining to offer clinical types of assistance to crisis patients. Criminal arrangements that can be applied to clinics that won't offer clinical types of assistance to crisis patients are the overall crook arrangements of Article 304 of the Lawbreaker Code and Article 144 531 of the Lawbreaker Code as well as the unique lawbreaker arrangements of Article 190 passages (1) and (2) of Regulation Number 36 of 2009 About wellbeing.

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