

HOSPITAL BYLAWS IN PROVIDING LEGAL PROTECTION AGAINST CRIMINAL ACTS BY MEDICAL PERSONAL

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ABSTRACT

Hospitals play a critical role in providing comprehensive health services while ensuring legal protection for medical personnel against potential malpractice claims. This study examines the role of Hospital Bylaws in safeguarding medical professionals by establishing ethical standards, dispute resolution mechanisms, and clear legal responsibilities. Using a legislative and conceptual approach, the research analyzes Indonesian health laws, including Law Number 17 of 2023 concerning Health, to evaluate how internal hospital regulations mitigate legal risks for medical personnel. Findings indicate that Hospital Bylaws serve as a preventive tool by standardizing professional practices, defining rights and obligations, and offering peer review processes to address disputes. The study highlights the importance of aligning hospital governance with national health laws to reduce litigation risks and enhance service quality. Implications suggest that well-implemented Hospital Bylaws can foster trust between medical staff and patients, streamline conflict resolution, and ensure compliance with accreditation standards. The research underscores the need for continuous education and training for health workers to uphold professional competencies and legal accountability.

KEYWORDS

Hospital Bylaws, Legal Protection, Medical Personnel, Hospitals, Malpractice



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INTRODUCTION

Hospitals, as healthcare institutions, carry out comprehensive individual health services by providing inpatient care, outpatient care, and emergency care. Comprehensive Health Services include promotion, prevention, treatment, and rehabilitation efforts (Muchtar, 2015). Based on the definition regulated in the latest Law that regulates health with a considerable scope, namely Law Number 17 of 2023 concerning Health (hereinafter referred to as the Health Law), hospitals are expected to be able to realize public health, which is a key element in achieving

welfare in accordance with the legal ideals of the "*rechtsidee*" of the Indonesian state.

The function of the state in realizing this philosophical goal, after the amendment of the 1945 NRI Constitution, is reflected through the Health Law. Several incidents in the community, such as the case of Prita Mulyasari which became a media spotlight, show that hospital management can produce services that cause suffering to patients due to negligence in health care. Therefore, it is necessary to hold hospitals accountable for negligence or actions that cause harm to patients. Hospitals play a leading role in the health sector by providing health services. The 1945 Constitution of the Republic of Indonesia, Article 34 paragraph (3), emphasizes that "The State has the responsibility for the provision of adequate health service facilities and public service facilities" (Supriadi, 2001).

The current Health Law regulates hospitals and can be used as a constitutional basis to realize this principle. The hospital carries out the entire process of health service activities by involving various health worker professions. Hospital management is implemented to serve patients as users of Hospital services. It is regulated in article 189 paragraph (1) letter r, that Every Hospital has the obligation to "compile and implement the internal regulations of the Hospital". This is the basis that in every hospital it is necessary to have *Hospital Bylaws* or internal hospital regulations that can be a reference for both AD/ART and SOP regulations in hospitals. What is meant by Hospital internal regulations or *Hospital Bylaws* are regulations that are prepared for the internal of the Hospital in order to carry out good hospital governance and good clinical governance.

There are three key groups in the implementation of Hospital Internal Regulations, namely nurses, doctors, and administrators who are then considered to be kept informed throughout the development process. First, nurse leaders must support the philosophy of shared governance. Without the support of the three groups during the long and sometimes difficult development phase, the project could be abandoned. Staff nurses must be actively involved from the start. The active role of staff nurses in the development phase will help them teach the concept to their peers later. Their enthusiasm and support will accelerate the acceptance of this concept by the rest of the staff. If the Hospital does not involve the staff as well as possible at the beginning. As a result, the process of integrating these concepts into their belief systems takes longer (Williams, 2023).

The function of hospital regulations is as a guideline for hospital owners in conducting hospital supervision. This regulation also serves as a guide for hospital directors in managing hospitals and formulating operational technical policies. This aims to ensure the effectiveness, efficiency, and quality of service. In addition, this regulation provides legal protection for all parties related to hospitals. Hospital regulations should also be used as a reference for resolving conflicts in hospitals

between owners, hospital directors, and medical staff, as well as to meet accreditation requirements (Susanti & Widjaja, 2021).

The functions and objectives of the Hospital Internal Regulations (Hospital Bylaws) stated in the Hospital must be in accordance with those stated in the Articles of Association / Bylaws or commonly abbreviated as (AD/ART) This Hospital follows the functions and objectives listed in the Health Law, including meeting the requirements for hospital accreditation. In the hospital accreditation process, the Hospital Budget is one of the documents evaluated in the Hospital Governance standard. An evaluation of effective leadership standards is carried out from the hospital owner or representative to the hospital manager to the lower level of the head of the unit or work team.

The standard states that the requirements are necessary to meet standard hospital governance, including the vision and goals set by the hospital owner. The Hospital Budget, which then functions as Hospital Bylaws or Hospital Internal Regulations, must also describe the organization of the hospital that must be determined by the owner, including the delegation of authority from the owner to the director of the hospital. An analysis of the contents of the Friendship Hospital Hospital Budget proves that there are differences in the vision and mission, the hospital logo, the organization of the hospital, the arrangement of the supervisory board as the owner's representative, as well as the nomenclature and arrangement of the Committee as part of the hospital management.

Hospitals are closely related to the Law of Medicine, not even separated from one another. Medical Law as well as Hospital Law is part of Health Law and is a newly recognized field of law in Indonesia. Aesculapius and Themis, the discipline of medicine and the discipline of law are the two oldest disciplines in the world. In the past, these two fields each had their own "*ivory tower*". With the advancement of science and technology, there is a pressure for various disciplines to be more open, including the discipline of medicine. This is a demand of society that cannot be denied (Guwandi, 1991). Thus, if it consists of the same two disciplines, it may cause different perceptions. So it is necessary to reunite the perception so that the rules used and the rules resemble the same thing.

A hospital is a healthcare institution that provides comprehensive services for a wide range of health issues. Based on the Hospital Law which has been amended and replaced as a product of the Omnibus Law in the Health Law, a hospital is a health service institution that provides complete care for individuals, including inpatient, outpatient, and emergency services. Soerjono and Herkunto explained that the hospital is a health service unit consisting of emergency, service, and rehabilitation sections. In providing health services, medical personnel such as doctors provide diagnosis, treatment, treatment, and health education to patients (Soerjono & Herkunto, 1987).

In providing medical care to patients, doctors and healthcare professionals should use their knowledge and skills carefully to avoid mistakes that can be detrimental to both them and patients. In Indonesia, until now, legal regulations regarding medical practices called malpractice do not have clear and detailed guidelines (Etc et al., 2022). In fact, in the Criminal Law Law, there is no provision that expressly regulates criminal sanctions related to violations of the law in the field of health or malpractice.

Some argue that existing rules, such as KODEKI (Indonesian Medical Code of Ethics), are sufficient to regulate and supervise the conduct of doctors in practice (Etc et al., 2022). Therefore, with a demicative opinion, there is an opinion that the magic house does not need legal intervention in the field of medicine. However, the main problem is how to protect the legal rights of doctors and not just about their legal accountability or legal awareness in practicing the medical profession. This shows that there is a lack of understanding of ethics and law among doctors. In addition, there is still confusion about what is actually considered an unlawful act in medical practice, which is often only considered a violation of professional ethics and should not be subject to criminal sanctions.

RESEARCH METHOD

This research was legal research, conducted to solve legal issues being faced, specifically related to the resolution of problems concerning Health Law, namely the Protection of Medical Personnel that could be secured by the existence of Hospital Bylaws or Hospital Internal Arrangements. This study used a statute approach and a conceptual approach, which were then analyzed prescriptively.

RESULT AND DISCUSSION

Hospital Liability

In relation to the responsibility of the Hospital, in principle, the hospital is civilly responsible for all activities carried out by medical personnel and health workers in accordance with article 1367 paragraph (3) of *Burgelik Wetboek* (BW) as follows:

A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of the people he is responsible for or due to the goods under his supervision. Parents and guardians are responsible for the harm caused by minor children, who live with them and against whom they exercise parental or guardian power. Employers and persons who appoint others to represent their affairs, are liable for the losses caused by their servants or subordinates in performing the work assigned to them. The schoolteacher or chief craftsman is responsible for the losses caused by his pupils or his craftsmen during the time that they are under his supervision. The aforementioned liability ends, if

the parent, the school teacher or the chief craftsman proves that each of them cannot prevent the act on which guess should be responsible.

In addition, the Hospital is also responsible for defaults and unlawful acts as written in articles 1234, 1370, 1371 and 1365 BW. If the action is carried out by its employees. Initially, the Hospital was Non-Profit (non-profit) but this has undergone rapid changes. Hospitals are no longer places where health workers and shamans operate separately to treat patients (Amein, 1991). Hospitals have become institutions that play the role of health service centers or health service units. Its function is to plan and coordinate health services comprehensively. A modern hospital, as described by HIRSH, carries out a wide range of activities, including the provision or arrangement of comprehensive diagnostic and outpatient services, home care programs, additional care facilities for the elderly and chronic patients, even covering the origins of medicine dating back to the days of pre-industrial society. Initially, hospitals were religious and charitable institutions that aimed to treat the sick, not medical institutions that focused on healing them (Leana & Bachtiar, 2017).

According to Abdulkadir Muhammad, the theory of liability in tort *liability* can be divided into several concepts (Muhammad, 2010):

- a. Liability due to unlawful acts committed intentionally (*intentional tort liability*), where the defendant commits an act that is detrimental to the plaintiff intentionally or knows that his or her actions will cause harm.
- b. Liability for unlawful acts committed due to negligence (*tort negligence*), which is based on the idea of wrongdoing related to moral values and legal rules that have been mixed.
- c. Absolute liability for unlawful acts without considering fault (*tort strict liability*), which is based on the defendant's actions, whether intentional or unintentional. In other words, the defendant remains responsible for the losses incurred as a result of his actions, regardless of whether there is a fault or not.

In this case, the hospital is the party that must provide achievements, while the doctor only functions as an employee or employee who is (subordinate to the hospital) who is in charge of carrying out the obligations of the hospital (Kharisma, 2008). In the case of government hospitals, doctors and nurses who work at the hospital do not exercise their rights and obligations as individuals but the rights and obligations of the hospital as a public legal entity. Because the responsibility of all actions that originate from rights and obligations is the responsibility of the Hospital (Pratama, 2014).

The medical profession, according to Hipocrates, is a combination of science and art. In this context, making a diagnosis is seen as an art form for doctors. This is because after listening to the patient's complaints, the doctor must use his imagination and make careful observations of the patient. The doctor's knowledge

of medical theories and the experience he has gained is the basis for diagnosing a patient's disease. The hope is that this diagnosis is close to the truth (S, 2008).

The law governs all aspects of human life, without exception, and the law has an influence on human life from the beginning of birth to death (Sukarmanto, 1999). Health services are one way to improve the health level of individuals, groups, and society as a whole. The goal is to achieve a good level of health and a quality of life. According to Lavey and Loomba, health services are efforts made by organizations or individuals to improve and maintain the health of individuals, groups, or communities (Loomba, 2014).

Medical services, as described by S. Verbogt, are services that are provided directly and can be accounted for professionally. The main focus is on the individual and aims to achieve physical and mental health through prevention and treatment. These regulations governing individual health care or medical services are known as Medical Law (Loomba, 2014).

Hospital regulations are the basis for the management of hospital organizations to improve effective governance. Effective governance in hospitals can improve the quality of health services in them (Muniarti, 2017). To achieve effective hospital governance, agreement and cooperation between hospital owners, managers, and medical staff are needed who are responsible for providing medical services to patients.

The Role of Hospitals in Implementing *Hospital Bylaws* to Protect Doctors

According to Article 65 of Law Number 36 of 2014 concerning Health Workers, and Article 35 Paragraph 6 of Law Number 38 of 2014 concerning Nursing and Article 23 Paragraph (3) point c which have all been revoked and coupled with Law Number 17 of 2023 concerning Health and Regulation of the Minister of Health of the Republic of Indonesia Number 2052/Menkes/Per/X/2011 concerning Licensing and Implementation of Medical Practice, namely that Hospitals are legally responsible for all losses caused by negligence committed by health workers in hospitals. The provision in question provides a legal construct that in the aspect of health law, risk liability (risico aansprakelijkheid) is reduced as *lex specialis* from Article 1367 paragraph (3) of the B.W.

In the formulation of article 192 of the Health Law, it is stated that

- (1) The Hospital is not legally responsible if the Patient and/or his/her family refuses or discontinues treatment that may result in the Patient's death after a comprehensive medical explanation. 121 Hospitals cannot be prosecuted in carrying out their duties in saving human lives.
- (2) Hospitals cannot be prosecuted in carrying out their duties in saving human lives and, in the formulation of article 193 it is stated that "The Hospital is legally responsible for all losses incurred due to negligence feared by the Hospital's Health Human Resources."

From the formulation of Articles 192 and 193, the following can be concluded:

1. The hospital will only be liable for losses that arise as a result of mistakes made by health workers inside the hospital.
2. The hospital will not bear all the losses of a person if it turns out that there is no evidence of negligence committed by health workers in the hospital.
3. Hospital liability does not cover intentional actions committed by health workers that result in losses to a person.
4. The hospital will be responsible for the negligence committed by health workers if the negligence occurs in the hospital.

Risk liability requires supervision from the mandater, namely the doctor who employs the nurse or the hospital as the employer to the health worker who works in the hospital as the recipient of the mandate. Control or supervision is one of the reasons for liability for unlawful acts committed by health workers when carrying out the mandate in question. Doctors and other health workers need to improve their professional skills to be able to take full responsibility for all their own actions. Deviant behavior of health workers who act beyond authority (abuse of power), use authority for other purposes or commit negligence because they are not capable of carrying out the competencies they should have, then it should be the personal responsibility of the health worker concerned (Fatma & Ainurasyid, 2022).

Hospitals also need to protect their institutions from mistakes made by health workers that can harm corporations by providing education and training to their health workers continuously so that they have "*professional competency of experts*" and internally it is necessary to agree on the rights and obligations of each party to be able to protect each other's interests in a certain objective standard (*specified standard of conduct*) which is regulated proportionally.

Hospital bylaws, play an important role in protecting doctors and other medical personnel, as well as providing a clear framework for hospital operations. Here are some ways in which hospital bylaws can help protect doctors:

1. Professional Standards: Hospital bylaws typically include standards of medical ethics and practices that doctors working in hospitals must follow. This helps to ensure that medical practices remain high and in accordance with established norms, which can protect doctors from lawsuits that may arise due to medical errors.
2. Rights and Obligations: Hospital bylaws also stipulate the rights and obligations of doctors in the context of cooperation with hospitals. This includes the right of doctors to practice medicine, obtain the support of necessary resources, as well as the obligation to comply with existing regulations and procedures. This can help doctors carry out their duties more comfortably and with a clear understanding of their expectations and obligations.

3. Peer Review Process: Hospital bylaws often include peer review procedures that are required if there are demands or concerns related to the doctor's medical practice. This gives doctors the opportunity to involve their peers in reviewing their actions, which can help protect doctors from unwarranted demands.
4. Legal Protection: Hospital bylaws can provide doctors with legal protection in case of legal action taken by the hospital or a third party. They can ensure that the procedures followed in addressing issues related to medical practice are fair and in accordance with the law.
5. Hospital administration and management: Hospital bylaws also govern the administration and management of hospitals, including the election of hospital leadership. This gives doctors influence in decision-making in hospitals and ensures that medical perspectives are represented in the decision-making process.

As such, hospital bylaws create a framework that helps protect doctors, ensure safe and ethical medical practices, and provide clear guidelines for carrying out their duties in a hospital setting.

CONCLUSION

Hospitals with good governance—through Hospital Bylaws, Corporate Bylaws, and Medical Staff Bylaws—recognize the importance of complying with regulations and standardizing practices such as Standard Operating Procedures (SOPs), Minimum Service Standards (SPM), Clinical Pathways, and accreditation standards across all service lines to minimize medical errors and disputes. In case of disputes, hospitals are expected to act proactively by prioritizing non-litigation dispute resolution methods, which have proven more effective in conflicts involving doctors, patients, and hospitals. Additionally, hospitals should synchronize their internal regulations with the latest Health Law to ensure consistency and legal protection for medical personnel. Hospital bylaws function as preventive measures that protect hospital employees by clearly defining roles, responsibilities, and legal safeguards. Future research is suggested to conduct an in-depth synchronization study of hospital bylaws with new health legislations and to evaluate the effectiveness of dispute resolution mechanisms in reducing litigation and improving hospital service quality.

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