

## Legal Responsibility for Patient Rights for Negligence in Health Services According to Law Number 44 of 2009

Cindy Ratna Amalia

Fakultas Hukum, Universitas Muhammadiyah Purwokerto, Indonesia

 [zeehanfuadattamimi@ump.ac.id](mailto:zeehanfuadattamimi@ump.ac.id)

### **Abstract**

*Hospitals are health care institutions that organize comprehensive individual health services that provide inpatient, outpatient, and emergency care. Based on Article 46 of Law Number 44 of 2009 concerning Hospitals, which states that hospitals are legally responsible for all losses caused by the negligence of health workers in hospitals. As the law develops, the position of patients as consumers and doctors and other medical personnel as health servants becomes equal. This equal position then creates rights and obligations that must be fulfilled from each party. This study aims to determine the responsibility of hospitals for the negligence of their medical personnel and the legal protection of patients in the act of childbirth performed in hospitals by being linked to Law Number 36 of 2009 concerning Health. This research is made using normative juridical methods through legal and conceptual approaches with primary, secondary and tertiary legal materials to support the research. The result of this research is legal certainty related to the hospital's responsibility towards the patient and legal protection of the patient's rights for negligence committed by medical personnel.*

**Keywords:** Patient Rights, Negligence, Healthcare

## Tanggung Jawab Hukum Terhadap Hak-Hak Pasien Atas Kelalaian Dalam Pelayanan Kesehatan Menurut Undang-Undang Nomor 44 Tahun 2009

### **Abstrak**

Rumah Sakit adalah institusi pelayanan kesehatan yang menyelenggarakan pelayanan kesehatan perorangan secara menyeluruh yang menyelenggarakan pelayanan rawat inap, rawat jalan, dan gawat darurat. Berdasarkan Pasal 46 Undang-Undang Nomor 44 Tahun 2009 tentang Rumah Sakit yang menyatakan bahwa rumah sakit bertanggung jawab secara hukum atas segala kerugian yang diakibatkan oleh kelalaian tenaga kesehatan di rumah sakit. Seiring berkembangnya undang-undang, kedudukan pasien sebagai konsumen dan dokter serta tenaga medis lainnya sebagai pelayan kesehatan menjadi setara. Kesetaraan kedudukan ini kemudian menimbulkan hak dan kewajiban yang harus dipenuhi dari masing-masing pihak. Penelitian ini bertujuan untuk mengetahui tanggung jawab rumah sakit atas kelalaian tenaga medisnya dan perlindungan hukum terhadap pasien dalam tindakan persalinan yang dilakukan di rumah sakit dengan dikaitkan dengan Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan. Penelitian ini dibuat dengan menggunakan metode yuridis normatif melalui pendekatan hukum dan konseptual dengan bahan hukum primer, sekunder dan tersier sebagai penunjang penelitian. Hasil dari penelitian ini adalah kepastian hukum terkait tanggung jawab rumah sakit terhadap pasien dan perlindungan hukum terhadap hak pasien atas kelalaian yang dilakukan oleh tenaga medis.

**Kata kunci:** Hak Pasien, Kelalaian, Pelayanan Kesehatan

## I. INTRODUCTION

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as stated in Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia in 28H paragraph (1) of the 1945 Constitution which explains that everyone has the right to live and has the right to defend his life and life, and has the right to obtain health services.<sup>1</sup>

Hospitals are health care institutions that organize comprehensive individual health services that provide inpatient, outpatient and emergency services. Hospitals as business entity organizations in the health sector have

an important role in realizing optimal public health status, therefore hospitals are required to be able to manage their activities, by prioritizing the responsibilities of professionals in the health sector, especially the responsibilities of medical personnel in carrying out their duties and authorities. The implementation of health management in hospitals, there is management related to three things that are the responsibility of hospitals in general. These three things are: hospital management related to duty of care (obligation to provide good service); hospital management related to facilities and equipment; and management related to personnel (health workers).<sup>2</sup>

Healthcare has improved over time. Better care through more modern science or technology has created hope for a longer life span and made it easier for doctors to make more accurate diagnoses and perform appropriate medical procedures on patients. The implementation of this medical service forms a relationship between the patient and the doctor, namely the doctor as a provider of medical services and the patient as a recipient of medical services, and the relationship between the doctor and the patient forms an agreement.

The therapeutic agreement between a doctor and a patient is often overlooked, either by a doctor or a patient. The lack of understanding between the two, especially the patient, often causes problems in the world of health concerning the practice of medicine. Problems regarding non-disclosure of information that is the right of a patient, misdiagnosis, and approval of medical actions. Patients will tend to just obey what a doctor orders because of their ignorance. Therapeutic agreements have special properties and characteristics, not the same as the properties and characteristics of agreements in general, because the object of the agreement in therapeutic transactions is not the patient's recovery, but rather finding the right effort for the patient's recovery, also called *Inspaningsverbintenis*.<sup>3</sup>

It is not always the case that medical services provided by health workers go well or can provide results as expected by the parties. There are times when there is negligence on the part of health workers that causes catastrophe; such as disability, paralysis or even death. When this happens, patients or their families often claim compensation. For example, in the case of a patient named Evi who was going to give birth normally in a hospital in the city of Bumiayu, then a few days later after the delivery process she experienced difficulty or pain when urinating, after being checked it turned out that there was gauze left in the urethra channel. This happened because of the negligence of one of the midwives who handled the delivery process. The family also asked for compensation from the hospital.

This request for compensation is due to the consequences that arise, both physical and non-physical. Physical losses include the loss or malfunctioning of all or part of the body's organs. Non-physical losses are losses related to a person's dignity. The opportunity to claim compensation now has a basic provision.<sup>4</sup>

<sup>1</sup> Pasal 28H ayat (1) Undang-Undang Dasar 1945

<sup>2</sup> Dewi Harmoni, Fahmi, Yetti, 2022. *Tanggung Jawab Rumah Sakit atas kelalaian tenaga medis dalam pelayanan kesehatan*, Pekabaru, Jurnal of Science and Social Research, Vol 4, No 3, Universitas Lancang Kuning, hlm 303.

<sup>3</sup> Wijanarko, B., & Sari, M. P, 2014. *Tinjauan Yuridis Sahnya Perjanjian Terapeutik dan Perlindungan Hukum Bagi Pasien*. Surakarta. Jurnal Privat Law Volume 1, 2 Nomor 4. universitas Sebelas Maret, hlm 4.

<sup>4</sup> Wahyudi, S, 2011. *Tanggung Jawab Rumah Sakit Terhadap Kerugian Akibat Kelalaian Tenaga Kesehatan Dan Implikasinya*. Purwokerto. Jurnal dinamika hukum, volume 11 Nomor 03, Universitas jenderal soedirman. hlm 506.

Based on Article 46 of Law No. 44 of 2009 concerning Hospitals, which states that hospitals are legally responsible for all losses caused by the negligence of health workers in hospitals. The provisions of this article become the juridical basis for someone to hold the hospital responsible in the event of negligence of health workers that causes harm.<sup>5</sup>

The hospital is legally responsible for damages caused by the negligence of medical personnel and this also applies according to the legal basis of Section 1367 of the Civil Code, Section 1367(1) of the Civil Code states that a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of those under his responsibility or property under his control. This provision is then emphasized in Article 1367 paragraph 3.<sup>6</sup>

This study aims to determine the responsibility of hospitals for the negligence of their medical personnel and the legal protection of patients in the act of childbirth performed in hospitals by being linked to Law Number 36 of 2009 concerning Health. This research is made using normative juridical methods through legal and conceptual approaches with primary, secondary and tertiary legal materials to support the research.

Negligence committed by medical personnel today is not a new occurrence. Many studies have been conducted over the past few years to examine the responsibility of hospitals for negligence committed by medical personnel. However, after reviewing several studies, it was found that the studies of Stefany B. Sandiata, "Legal protection of the right to health services in Government Hospitals," Lokadata, November 09, 2013, <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/3028/2573>, previously focused only on the urgency of legal protection of patients' rights and legal protection of the right to obtain health services.

In addition, several other studies discuss the Legal Analysis of Therapeutic Contracts on Medical Actions in the Relationship between Patients and Doctors in Hospitals, Richard Nuha (2016), Lokadata, <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/11527>, while the author will discuss the Legal Responsibility for Patient Rights for Negligence in Health Services according to Law Number 44 Year 2009.

## II. RESEARCH PROBLEMS

Based on the background that has been described, the problems to be discussed are:

- a) How is the responsibility of hospitals for the negligence of medical personnel in health services according to Law No. 44 of 2009 concerning Hospitals?
- b) How is the legal protection of the patient's rights against the negligence of medical personnel in relation to Law No. 36 of 2009 concerning Health?

## III. RESEARCH METHODS

In this journal, the type of research used is normative juridical research, which is a method guided by the laws and regulations. This legal research uses qualitative descriptive techniques, namely research used to describe problems that occur in the present or are ongoing. In this research, the Statute Approach, and Conceptual Approach are used. Legislation used as primary legal material includes: 1) Constitution of the Republic of Indonesia 1945, 2) Law Number 36 of 2009 concerning Health, 3) Law Number 44 of 2009 concerning Hospitals, 4) Law Number 36 of 2014 concerning Health Workers, 5) Civil Code, 6) Regulation of the Minister of Health of the Republic of Indonesia 340/MENKES/PER/III/2010 concerning Hospital Classification. While from secondary legal materials, namely: text books, legal dictionaries, legal journals, internet, draft laws and regulations. This research uses the library research method. Library research where the collection of legal materials can utilize legal indexes (index of legislation, index of court decisions, and books) both print and electronic including the internet.

<sup>5</sup> Pasal 46 Undang-Undang No. 44 Tahun 2009 tentang Rumah Sakit.

<sup>6</sup> Pasal 1367 ayat (1) dan (3) Kitab Undang-Undang Hukum Perdata.

#### IV. RESULT AND DISCUSSION

##### 1. Hospital Liability in Medical Services according to Law No. 44 Year 2009 on Hospitals

Patients according to Article 1 number 10 of Law Number 29 of 2004 concerning Medical Practice are every person who consults their health problems to obtain the necessary health services either directly or indirectly to a doctor or dentist.<sup>7</sup>

According to the Decree of the Minister of Health of the Republic of Indonesia No. 340/MENKES/PER/III/2010 is: "A hospital is a health care institution that organizes comprehensive individual health services that provide inpatient, outpatient and emergency services". In an emergency, hospitals must prioritize the interests of patients. This is because health care facilities (including hospitals) are obliged to provide health services for saving the patient's life and preventing disability first. (Article 32, Paragraph (1). Hospitals may not refuse patients under any circumstances or ask for an advance payment. (Article 32, Paragraph (2). Despite the prohibition of asking for an advance payment, hospitals still ask for an advance payment before providing health services to their patients. This is unfortunate because the hospital, which is based on social functions, has instead turned into a commercialist one. Hospitals also need payment for health services that have been provided to their patients. However, it is better if the hospital prioritizes the interests of its patients before asking for an advance payment to the patient or the patient's family, especially for patients who need immediate medical treatment (emergency patients).<sup>8</sup>

In Article 46 of Law No. 44 of 2009 concerning Hospitals, the responsibility of hospitals is: "The hospital is legally responsible for all losses caused by negligence committed by health workers in the hospital."<sup>9</sup>

The responsibility of the hospital as mentioned in Article 46 of Law No. 44 of 2009 is also responsible for negligence committed by health workers. The legal basis for hospital liability in health services performed by health workers against their patients is the existence of a legal relationship between the hospital as an organizer of health services / medical services and the patient as a user of health services. The legal relationship is born from an engagement or agreement on health services called a therapeutic agreement.<sup>10</sup>

Juridically, a therapeutic agreement is defined as a legal relationship between health workers and patients in professional medical services based on competence in accordance with certain expertise and skills in the health sector. According to Hermien H Koeswadi, therapeutic transactions are agreements to find or determine the most appropriate therapy for patients by doctors and health workers. Meanwhile, according to Veronica Komlawati, therapeutic transaction is a legal relationship between doctors (health workers) and patients in professional medical services, based on competence in accordance with certain expertise and skills in the health sector.<sup>11</sup>

According to Guwandi, a hospital has 4 (four) areas of responsibility, namely:

- a. Responsibility for personnel  
This is based on the 'employer-employee' relationship. This relationship was once universal and our country is still in effect based on the Civil Code Article 1366 jo Article 1365 jo. Article 1367. This responsibility includes all employees working in the hospital.
- b. Professional responsibility for the quality of treatment or care  
This means that the level of provision of health services, both by doctors and by nurses and other health workers must be based on professional standards. Thus, the hospital is legally responsible if there is a provision of 'cure and care' services that are unusual or below standard.
- c. Responsibility for facilities and equipment

<sup>7</sup> Pasal 1 angka 10 Undang-Undang Nomor 29 Tahun 2004 tentang Praktik Kedokteran.

<sup>8</sup> Danny Wiradharma, Buku Panduan Kuliah Hukum Kedokteran, Binarupa Aksara, Jakarta, 2006, hlm. 45-46.

<sup>9</sup> Pasal 46 Undang-Undang Nomor 44 Tahun 2009 tentang Rumah Sakit.

<sup>10</sup> Syachrul Machmud, Op-Cit, hlm. 181.

<sup>11</sup> Cecep Triwibowo, Op-Cit, hlm. 62.

This area of responsibility includes basic hospitality equipment, hospitality, medical equipment, and so on. The most important thing is that the equipment should always be in a safe and ready-to-use condition at all times.

d. Responsibility for building safety and maintenance

For example, the building collapses, the roof tiles fall and injure people, the floor is so slippery that a visitor falls and suffers an injury, and so on.

The legal relationship between hospitals and patients is a civil relationship that emphasizes the implementation of the rights and obligations of each party reciprocally. Hospitals are obliged to fulfill the rights of patients and patients are obliged to fulfill the rights of hospitals. The failure of one party to fulfill the rights of the other party, whether due to default or negligence, will result in a lawsuit or civil claim in the form of compensation for losses suffered by the patient.

## 2. Legal Protection of Patient Rights in Health Services

Rights and obligations in the life of society, nation and state are two things that are correlative. This means that in a legal relationship, the rights of one party are a necessity for the other party. In providing health services, doctors or health workers who are in direct contact with patients should do their best for patients or the community. That is a general obligation that must be fulfilled by doctors or health workers. Conversely, patients and the public, in addition to having the right to receive good health services, are also obliged to comply with all the recommendations of doctors and other medical personnel or health workers to prevent negative or unwanted treatment results.<sup>12</sup>

Legal protection of patients' rights in health services based on Law Number 36 of 2009 is regulated in Article 58 which stipulates,<sup>13</sup>

(1) Every person has the right to claim compensation against a person, health worker, and/or health provider who causes harm as a result of an error or negligence in the health services they receive.

(2) The claim for compensation as referred to in paragraph (1) does not apply to health workers who perform life-saving measures or prevent someone's disability in an emergency.

Based on the provisions of Article 58 of Law Number 36 of 2009, it can be understood that the legal protection of patients' rights in health services based on the Health Law is the protection of patients' rights through civil lawsuits to claim compensation. In the framework of protecting patients' rights, the law gives patients the right to sue, in the event of services that are not in accordance with service standards, or often called malpractice.<sup>14</sup>

Every person has the right to the confidentiality of his/her personal health condition that has been disclosed to the health service provider. The right to confidentiality of personal health conditions does not apply in the event of:<sup>15</sup>

1. Order of the law.
2. Court order.
3. Permission of the person concerned.
4. Public interest.
5. The interests of the person.

<sup>12</sup> Sri Siswati, *Etika dan Hukum Kesehatan dalam Perspektif Hukum Kesehatan*, PT Raja Grafindo Persada, Depok, 2017, hlm. 55.

<sup>13</sup> Pasal 58 Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan.

<sup>14</sup> Zahir Rusyad, *Hukum Perlindungan Pasien*, Setara Press, Malang, 2018, hlm. 82.

<sup>15</sup> *Ibid*, hlm. 56.

Another right that patients or the public have is to claim compensation against a person, health worker, and/or health provider who causes losses due to errors or omissions in the health services they receive. Compensation claims do not apply to health workers who perform life-saving or disability-preventing measures in an emergency, but compensation claims apply to the leaking of medical secrets.

Medical practice is not a job that can be done by anyone, but can only be done by certain groups of medical professionals who are competent and meet certain standards and have received permission from authorized institutions, and work in accordance with the standards and professionalism set by professional organizations.

Based on the description above, it can be concluded that some of the responsibilities of doctors are as follows:

1. Carry out functional duties in accordance with science through tiered education.
2. In accordance with competence and meet certain standards.
3. Obtain permission from the authorized institution.
4. Work in accordance with professional standards.

## V. CONCLUSION

According to the Decree of the Minister of Health of the Republic of Indonesia No. 340/MENKES/PER/III/2010 is: "A hospital is a health care institution that organizes comprehensive individual health services that provide inpatient, outpatient and emergency services". The responsibility of hospitals as mentioned in Article 46 of Law No. 44 of 2009 is also responsible for negligence committed by health workers. The legal basis for hospital liability in health services performed by health workers against their patients is the existence of a legal relationship between the hospital as a health service / medical service provider and the patient as a health service user. The legal relationship is born from an engagement or agreement on health services called a therapeutic agreement.

Legal protection of patients' rights in health services based on Law Number 36 of 2009 is given in the form of civil liability rights to claim compensation in the event that health services have caused patient losses due to errors or omissions in the health services they receive in the form of disruption of health or disability due to health services that are not in accordance with standards.

## REFERENCES

- [1] Hanafiah M. Jusuf, 2009, *Etika Kedokteran dan Hukum Kesehatan*, Jakarta: EGC.
- [2] Harmoni, D., Fahmi, F., & Yetti, Y., 2022, *Tanggung Jawab Rumah Sakit atas kelalaian tenaga medis dalam pelayanan kesehatan*, Pekabaru, *Jurnal of Science and Social Research*, Vol 4, No. 3
- [3] Jayanti Nusye Ki, 2009, *Penyelesaian Hukum dalam Malpraktik Kedokteran*, Jakarta: PT Buku Kita
- [4] Nining Latianingsih, (2017) "Prinsip Tanggung Jawab Pelaku Usaha Dalam Transaksi Elektronik Menurut Undang-Undang Informasi Dan Transaksi Elektronik, *Jurnal Ekonomi Dan Bisnis*, Vol 11, No. 2
- [5] Nuha, R. (2016). *Analisis Hukum Kontrak Terapeutik Terhadap Tindakan Medik Dalam Hubungan Pasien Dengan Dokter Di Rumah Sakit*. *Lex et Societatis*, Vol 4, No 3.
- [6] Rusyad Zahir, 2018, *Hukum Perlindungan Pasien*, Malang: Setara Press.
- [7] Sandiata, S, 2013. *Perlindungan Hukum Hak Mendapatkan Pelayanan Kesehatan di Rumah Sakit Pemerintah*. *Jurnal Lex Administratum*, Vol 1, No 2.
- [8] Siswati Sri, 2017, *Etika dan Hukum Kesehatan dalam Perspektif Undang-undang Kesehatan*, Depok: PT Raja Grafindo Persada
- [9] Triwibowo Cecep, 2014, *Etika Dan Hukum Kesehatan*, Yogyakarta: Nuha Medika.

- [10] Wahyudi, S, 2011, Tanggung Jawab Rumah Sakit Terhadap Kerugian Akibat Kelalaian Tenaga Kesehatan Dan Implikasinya. Jurnal dinamika hukum, Vol 11, No 3.
- [11] Wijanarko, B., & Sari, M. P. (2014). Tinjauan Yuridis Sahnya Perjanjian Terapeutik dan Perlindungan Hukum Bagi Pasien. PRIVAT LAW 1, Vol 2, No 4.
- [12] Wiradharma, Danny, 2006, Penuntun Kuliah Kedokteran, Jakarta: Binarupa Aksara.



This work is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/)

---