

## Responsibilities of Hospitals as Corporations for Doctor Malpractice

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### ABSTRACT

Hospitals have an important role in realizing the degree of public health. As a business entity in the health sector, there is a relationship between patients, doctors, and hospital managers. If malpractice occurs, the hospital must be held legally responsible. This study will examine the concept of errors in criminal law, the relationship between hospitals, doctors, patients about hospital management, and the responsibility of the hospital as a corporation against doctor malpractice. The approach used in this research is normative, namely examining the responsibilities of the hospital-based on different legal perspectives. The data used is secondary data, and the data will be analyzed qualitatively. The results of this study indicate that errors include intentional and negligent. Ignorance contains errors in outward actions that point to certain mental states, but on the other hand, is the mental state itself. Ignorance includes all meanings of error in a broad sense that is not intentional. The relationship between patient and doctor is part of the overall relationship between health care and society. The relationship between doctor and patient that results in consent because giving and receiving medical care is justified in society. There are several models of the relationship between doctors and hospitals. Doctors as employees, doctors as attending physicians (partners), and doctors as independent contractors. It is not easy to determine the type of negligence of health workers that is detrimental to a person and will be the responsibility of the hospital. If malpractice occurs, clarification is made first, the hospital as the manager of public health services is legally responsible.

### Keywords

Hospital, Corporation, Doctor, Malpractice.

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### Introduction

Hospital is an organization of business entities in the health sector which has an important role in realizing the optimal degree of public health. Hospitals are required to be able to manage their activities, by prioritizing the responsibilities of professionals in the health sector, especially medical and nursing personnel in carrying out their duties and authorities. Not always, medical services provided by health workers in hospitals can provide the results expected by all parties (Heryanto, 2010). Meanwhile, according to WHO, a hospital is a business entity that provides accommodation that provides short-term and long-term medical services consisting of observation, diagnostic, specialization, and rehabilitative measures for people who are sick, injured, those who want to give birth and provide outpatient services.

The hospital business as a business entity cannot be separated from the development of economic

activities in the service sector. Hospitals can be viewed as business actors providing services and patients as consumers as referred to in Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection. This means that in addition to carrying out health service activities, the hospital also considers the advantages of running its business. These characteristics are in line with the objectives of corporate activities that prioritize profit in running their business. H.N. Djaelani is of the view that the hospital paradigm has now shifted from a service facility function (service function) to a money receiving function (budgetary function). Economically the hospital is a market because it is a demand and supply, meeting to exchange goods and services, which can create a meeting point between the amount of satisfaction received by the customer (patient) and the amount of money paid by customers (patients) to the hospital (Djaelani, 2009). Sujudi in Djaelani during the Seminar and National Workshop on Proactive Hospitals in the

Era of Globalization reminded that the performance of Hospital Services, both Government and Private in the Liberalization of Health Services in urban areas, tends to be oriented towards the market mechanism (Djaelani, 2009).

One of the problems that often occur in the hospital environment is the occurrence of malpractice, both by health workers, in the form of medical malpractice and medical malpractice. Malpractice in the medical field, namely malpractice committed by health workers when he is carrying out his profession in the medical field. Malpractice can be in the form of an intentional act such as certain misconduct, negligence, or an unreasonable lack of skill, resulting in injury, or loss to the party being handled (Black's). Law Dictionary, 1999). Malpractice of health workers, or more particularly by doctors, brings us to a question about Criminal Liability, in this case, whether the hospital can be held responsible for malpractice committed by doctors.

This article will discuss the concept of error in criminal law, the relationship between hospitals, doctors, patients about hospital management, and the responsibility of hospitals as a corporation against doctor malpractice.

### Research Methods

The approach used in this research is normative. The normative approach in legal research is to study legal issues with a positive legal perspective. This study uses a normative approach because it examines the responsibility of hospitals as corporations for malpractice by doctors based on applicable laws and regulations. The data source used in this study is secondary data. Secondary data is data that is obtained indirectly or has been provided by other parties. Secondary data used is in the form of legal documents which are used as the main reference for assessing the hospital's responsibility for doctor malpractice. The data collection techniques used in this study were through offline and online searches. Penulisan literature offline is an activity to find library sources for data storage. Meanwhile, online writing is an activity to find library sources in cyberspace through the internet network. Library research is conventionally carried out by finding library materials, book collections, and

personal journals, buying books, and attending scientific activities (seminars). Meanwhile, online searching is done by searching the internet. The data analysis method used is qualitative. Qualitative data analysis is the process of organizing and sorting data into patterns, categories, and basic description units so that themes can be found presented in narrative form. This study uses qualitative data analysis because the data will be presented in a narrative-descriptive manner, not in numerical or numerical form (Hamzani, 2020).

### Discussion

#### 1. The Concept of Errors in Criminal Law

*Dolus* / intentionally is an act that is done on purpose for an offense to occur (Article 338 of the Criminal Code). While *Culpa* / accidental is the occurrence of offense due to an unintentional act or negligence (Article 359 of the Criminal Code). *Dolus* is known and error which in a narrower sense is *culpa*, is an essential element in a criminal act to be held criminally responsible. As a result of this mistake, *culpa* contains 2 (two) elements or requirements, namely: First, not being careful, and not being aware of (lacking *Voorzichtig*). Second, not suspecting the occurrence of actions and consequences (not being able to "*voorzien*"). (Adji, 1991).

The law does not specify what negligence means. From the science of criminal law, the definitions are known: 1) If he does something that turns out to be wrong because he uses his memory/brain incorrectly, he should use his memory (as well as possible), but he doesn't use it. In other words, he has performed an act (active or passive) with less than the necessary sanity; 2) The perpetrator can predict the results that will occur but feels he can prevent it. If that would have happened, he would prefer to take action that would result in that effect. But that action is not harmed, for which it is later denounced, because it is against the law; whereas in the case of negligence, the perpetrator contains:

- a. lack of thought (use of reason) necessary;
- b. lack of knowledge (knowledge) required, and
- c. lacking the necessary wisdom (beleid).

Ignorance, including intentionality, is a form of error. Ignorance is a lesser form of intent. But it can also be said that negligence is the opposite of intentional because if it is intentional, the result that arises is desired, even though the perpetrator can practice it beforehand. Including also lies one of the difficulties of distinguishing between conditional deliberation (possible-awareness, *dolus eventualis*) and severe forgetfulness (*culpa lata*).

Comparing forgetfulness and misery, Noyon and Langemeijer state: *De schuld blijkt zoo een uiterst gecompliceerde juridische structuur te hebben. Zij omvat naast elkaar uiterlijke gedragsfouten, die op een bepaalde innerlijke gesteldheid wijzen, anderzijds die gesteldheid zell. Zoo opgevar ovat schuld in engeren zin alle schuld in ruimeren zin die niet is opzet Het opzet onderscheidt zich van de schuld dove cen positie kenmerk, bet bewuste willen of aanvaarden van de door het opzet beheerschte bestanddeelen, de schuld van het opzet slechts door het ontbreken van dit kenmerk. Daarom is het ook redelijk, ze het nier practisch dat voor schuld in mimen en in engen zin hetzelfde woord gebruikt wordt.* (Ignorance is a very complex legal structure. On the one hand, it is an error in an outward action that points to a certain mental state, but on the other hand, it is a mental state itself. If so, negligence includes all meanings of error in its broadest sense which is not deliberate. The difference between deliberate and negligence is that deliberately there is a positive character, namely the conscious will and consent of the elements of the offense which is overwhelmed by deliberation, while this positive character does not exist in negligence. Although impractical, the term is used the same for error in the broad sense and the narrow sense.

Mistakes cover a very broad meaning beyond intent. Error there is a will, whereas in forgetfulness there is no will. The word "schuld" in Dutch legal literature can be interpreted as a mistake and it can also be interpreted as negligence. Errors in the understanding of the form of errors also include deliberate and negligent, while in a narrow sense, errors can be interpreted as negligence.

Still related to the distinction between *dolus* and *culpa*, Rummelink thinks that *dolus* and *calpain* are opposite poles. The *dolus* perpetrator wants the consequences that are punishable by

punishment. *Culpas* do not want consequences that are deemed inappropriate by legislation. Still, according to Rummelink, the weather situation facing the *dolus* is not a minus in the sense that something lighter is aliud or something different. Although the lightest type of *dolus*, namely *dolus eventualis*, is very close to the form of the heavy *culpa* type, namely *culpa lata*, nevertheless *dolus* is directed positively towards consequences, whereas *culpa* is just the opposite. Adagio *culpa dola* exonerate applies, which means that carelessness frees someone from *dolus* (Hiariej, 2018).

## 2. Hospital, Doctor and Patient Relationship Associated with Hospital Management

### a. Hospital, Doctor and Patient Relationship

The relationship between doctor and patient has undergone a pattern change, in which the patient is considered to be in an equal position with the doctor. All medical actions that a doctor will take on his patient must have the consent of the patient. After the patient gets an adequate explanation of all the ins and outs of the disease and his medical efforts, the concern about criminal responsibility in the hospital originates from the relationship that occurs between the patient, doctor, and hospital. Health care efforts are formed between doctors and patients. Patients who need treatment come to doctors who have expertise so that a therapeutic transaction is formed. The therapeutic transaction relationship is a transaction between a doctor and a patient to seek/find therapy as an effort to cure a patient's illness by a doctor (Koeswadji, 1998).

The relationship between doctors and patients that results in consent because giving and receiving medical care is something that can be justified in society (Priharto & Adi, 2013). A broader and deeper view of the relationship between patient and doctor is suggested by Leenen and Lamintang that the relationship between patient and doctor is a relationship that cannot stand alone but as part of the overall relationship between health care and society. Through this overall relationship, the basis of the relationship between doctor and patient which is in the form of trust and professionalism can be explored. Trust is a form of a request for help from patients to doctors as someone who is considered to know better what is

best for their health. Even though the patient himself has the right to the health of his body. The doctor only functions as an advisor to the best health efforts for patients. Meanwhile, the professional aspect considers the ability of doctors as someone who has been equipped with the knowledge and adheres to the promise of the Professional Doctor to put forward the best for patients who need medical help (Christianto, 2011).

The doctor and patient relationship is an engagement relationship to do certain things (Article 1637 BW) such as an employment agreement, where the patient is bound to get the services of a doctor and on the other hand the doctor gets payment for the services provided. However, this patient-doctor relationship has different characteristics when compared to other relationships because it is based on the professionalism of the doctor and the patient's trust. Regarding the relationship between doctors and hospitals, several relationship models can occur, namely the doctor as an employee, the doctor as an attending physician (partner), and the doctor as an independent contractor.

The position of the Hospital is the party that has to provide achievements, while the doctor only functions as an employee (sub-ordinate of the Hospital) who is in charge of carrying out the Hospital's obligations, in other words, the position of the Hospital is as a principal and a doctor as an agent. (partner), in this case, the position between the doctor and the hospital is the same. Doctors as an independent contractor, doctors act in their profession and are not tied to any institution. Each of these working relationship patterns will determine whether the hospital is responsible for, or not for, the losses caused by the doctor's mistake, and the extent of the doctor's responsibility to his patients in the hospital depending on the pattern of his work relationship with the hospital where he works. In the position of a doctor as an employee, the doctor is the executor of the hospital's obligations, or the party responsible in the event of negligence caused by the doctor. Meanwhile, in the position of a doctor as an attending physician (partner), the doctor is responsible for negligence in his medical actions, because in this case, the hospital is only a provider of facilities. This position is the same as the position of a doctor as an independent contractor.

## **b. Hospital Management**

The top leadership and responsibility in the hospital lie with the head of the hospital (government/foundations, other legal entities) who carry out the management. Management or managing is a term of economic discipline. Usually associated with a business entity, namely: applying the economic principle "with the minimum input trying to get the maximum output". Nowadays the term management is also applied to hospitals, so the term "hospital management" is not surprising anymore. However, until now in the discussion of hospital management problems, it has not been linked to the responsibility (risk) factor for compensation that may be imposed by law. It may be assumed that each field corresponds to its area of disciplinary regulation so that the legal factor in management courses or seminars has not been taken into account.

The implementation of health management in the hospital, there is management related to three things which are the responsibility of the hospital in general, namely: hospital management related to personnel; hospital management related to the implementation of tasks; and management related to the duty of care (Kerlaba, 1993). In the organization of hospital activities, some activities give rise to responsibility for the management or management of the hospital and the responsibility of health professionals in the hospital, (Jayanti, 2009) which consists of responsibility for hospital management; and the responsibilities of health workers (doctors, nurses).

Hospital management/management must pay attention to the quality of health services in the international declaration of human rights and social welfare (UN Charter 1945 and United Declaration Human Rights 1948) and developed in the Declaration of Helsinki 1964, which was later refined and updated by the results of the congress. "The 29" of World Medical Assembly, Tokyo 1975 "known as the New Helsinki 1976. The organization of hospital management activities, since 1976 has to carry out the basic legal philosophy and doctrine of developing" professional standards and accreditation of health services ". Based on the UN agreement, UDHR, Helsinki, WMA, Tokyo 1975, hospital management must have five basic moral norms,



namely: the right to information; the right to self-determination; the right to health care; the right to protection of privacy; the right to second opinion. The five health norms are the mandatory responsibility of hospital management and are intrinsic to the norm values of health services in hospitals. The relationship between hospital and patient and doctor has become an international standard covered in the "Hospital Patient's Charter 1979, which consists of three moral norms, namely: respect for patients; professional standards; and social functions and responsibilities for hospital health services. Hospital management must always prioritize the norms mentioned above under international standards referred to in the "Hospital Patient's Charter 1979" which was expanded into force with "The Declaration of Lisbon 1981", which regulates various rights and obligations of patients and doctors or hospitals. Currently, the duties, functions, and obligations, as well as the operation of hospitals in Indonesia, are regulated in Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals. The task of the hospital is to provide complete individual health services. With these hospital duties, then the hospital functions in Indonesia are determined, as follows. First, organizing medical treatment and health recovery services under hospital service standards. Second, maintenance and improvement of individual health through complete second and third level health services under medical needs. Third, the implementation of education and training for human resources to increase the capacity in providing health services. Fourth, conducting research and development as well as screening technology in the health sector to improve health services by taking into account the ethics of health science (Article 5). In connection with the duties and functions of the hospital, the hospital has obligations, namely things that must be done or things that must be done. Obligations consist of perfect obligations and imperfect obligations. Perfect obligations are obligations that are always associated with the rights of others, while imperfect obligations are obligations that are not related to the rights of others. Perfect obligations are essentially obligations, and imperfect obligations are moral. From a legal aspect, obligations are all forms of burdens given or determined by law to a person or legal entity.

It is also necessary to think about the extent of the legal impact (risk) that can arise on hospital management. "Who should be legally responsible in the hospital if there is a lawsuit: doctor, nurse or hospital (read: owner as a legal entity)". The amount of money in exchange for losses can be large. "Who has to bear" "Or does the patient himself have to bear it?" "Or is it covered by insurance?" "But this also asks for a fee for closing the policy which according to economic calculations must also be taken into account in the" cost ".

### **3. Hospital Responsibilities for Negligence Committed by Doctors to Patients who Cause Harm**

The obligations of hospitals in Indonesia have been stipulated in Article 29 of Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals, namely: providing the correct information about hospital services to the public. The hospital is responsible for all damages to a person as a result of the negligence of health workers in the hospital. This provision becomes a juridical basis for a person to hold the hospital responsible in the event of negligence by health workers that causes harm.

The hospital is responsible for losses, limited to the result of the negligence of health workers in the hospital. The hospital is not responsible for all of a person's losses if it is proven that there is no negligence of the health personnel in the hospital. The hospital is not responsible for any deliberate actions by health workers that cause someone's loss, which is not the responsibility of the hospital. Besides, the hospital is responsible for the negligence of health personnel, if the negligence is committed and occurs in the hospital.

Furthermore, to determine the extent of the hospital's responsibility for negligent acts of health workers in the hospital, theoretically seen from various aspects, such as The pattern of therapeutic relationships; Patterns of working relations for health workers in hospitals; Hospitals as corporations; and Types of malpractice committed by health workers. One by one, there will be a description of the aspects that are the basis of the hospital's thinking that is responsible

for the negligence of health workers in the hospital.

The basis of justification/relevance of the hospital being responsible for the negligence of health workers (especially doctors), can also be seen from the aspect of the condition of the therapeutic relationship (relationship of medical interests) between the patient and the hospital (Wahyudi, 2011). Therapeutic relationship patterns in hospitals can be in the form of patient and hospital relationships; patient and doctor relationship patterns; If the pattern of the therapeutic relationship is between the patient and the hospital, then the position of the hospital is the party that gives achievements, while the doctor only functions as an employee (sub-ordinate of the hospital) who is in charge of carrying out the hospital's obligations.

The position of the hospital is as principal and doctor as an agent. Meanwhile, the patient is the one who is obliged to give the contribution. This kind of relationship usually applies to government-owned hospitals whose doctors are paid regularly and in full, not based on the number of patients treated or the quality and quantity of medical procedures performed by doctors. With this therapeutic relationship pattern (patient-hospital relationship), if there is a loss suffered by the patient due to negligence of the doctor (health worker), in this case, the hospital is responsible.

The patient-doctor relationship pattern occurs when the patient is competent and is hospitalized where the doctors work not as an employee, but as a partner (attending physician). This pattern places doctors and hospitals on an equal footing. Doctors are the ones who are obliged to give achievements, while the hospital's function is only as a place that provides facilities (beds, food, and drink, nurses/midwives as well as a medic and non-medical facilities). The concept is as if the hospital rents out its facilities to doctors who need them. This pattern is widely adopted by private hospitals where doctors earn income based on the number of patients, the quantity, and the legality of the medicinal actions taken. With the patient-doctor relationship pattern, if there is a doctor's (health worker) negligence that causes harm to the patient, then the doctor (health worker) is responsible, and not the hospital's responsibility.

Hospitals, both managed by the government and the private sector, are very complex organizations.

Many gathered professional workers with various backgrounds of expertise and equipment used. The bigger and more sophisticated the hospital the more complex the problem. It is not easy to determine hospital responsibilities. In addition to the pattern of the therapeutic relationship and the pattern of the working relationship of the medical personnel, the cause of the loss itself also determines the extent to which the hospital must be accountable. Based on the description above, it can be seen that the extent to which the hospital must be responsible depends on the pattern of the therapeutic relationship that occurs and the pattern of the working relationship between health workers and hospitals (health worker status).

For losses caused by medical and non-medical equipment, it can be borne by the hospital, both government and private hospitals. If a patient falls out of bed because the bed is broken resulting in a broken leg, then the hospital is responsible for this loss. The hospital must exercise strict control of all equipment, especially medical equipment. Regarding losses caused by medical treatment errors, of course, it depends on the status of the doctor concerned. If his position is as the attending physician, the hospital is not responsible for the doctor's mistakes. However, if the doctor's status in the hospital is an employee, based on the doctrine of vicarious liability, the liability can be transferred to the hospital.

Many things are decided in each level (echelon) and in each field that can be said to influence the success or failure of the provision of care/treatment services. In general, it can be said that there is multi-management and in providing services the factors of "good faith" (*Goede Trouw*, good faith) and elements of "trust" (*trust*, *vetrouwen*) play a decisive role. Everything is very dependent on the culprit. Besides, there are also many delegations of authority in carrying out their duties. So in an outline of the responsibilities in the hospital when viewed from the perspective of the perpetrator - can be grouped into three groups:

- a. hospital affairs are responsible to the head of the hospital;
- b. the Medical Sector is responsible for each doctor; and
- c. the nursing field is responsible for each nurse (midwife, paramedic).

But in practice, it is not that easy and that simple. This is because in reality the three groups of responsibilities are interrelated and intertwine with each other (Roscam Abbing: intertwined and interconnected). It often happens that it is quite difficult to sort out and put a clear limit on responsibility. Who should be held accountable in an event must be viewed in a caustic manner. Each case has its characteristics, so it can be said that almost no two cases are alike. It cannot be generalized, because it depends on many factors, such as the situation and conditions when the incident occurred, the patient's condition (pre-existing conditions), evidence that can be submitted (medical records, witnesses, etc.), what has been done based on "medical profession standard", is there no error of judgment, whether there is a delegation of authority and whether the delegation can be justified in that case. Is there no element of negligence or the possibility of an element of intent, if there is an element of negligence: who is negligent? is there no fault in the patient himself for not telling all of his condition honestly, not according to the doctor's advice and violating the doctor/hospital's prohibitions to worsen his condition (contributory negligence) lawsuits filed: criminal, civil, administrative? and so on.

The hospital as a legal entity (corporation) can be prosecuted and accountable for the malpractice actions of health workers in the hospital, based on the teachings or doctrines of justification that the corporation bears the following responsibility:

*First*, the doctrine of strict liability. According to this teaching, criminal responsibility is borne by the person concerned, there is no need to prove that there is an error (intentional or negligent) on the perpetrator. This teaching is also called absolute liability. This teaching is applied to actions that are very detrimental to the public interest (society in general).

*Second*, the doctrine of vicarious liability. This teaching is taken from civil law in the context of liability against the law which is applied to criminal law. This teaching is also known as the teaching of substitute responsibility. An employer is responsible for the mistakes made by his subordinates as long as it occurs in the context of his job. This provides the possibility for the party who has suffered losses due to their illegal actions to sue their employer to pay compensation. A

corporation can be responsible for the actions committed by its employees, its proxies or mandates, or whoever is responsible to the corporation. The application of this doctrine is carried out after it can be proven that there is subordination between the employer and the person who commits the crime, and the acts committed within the scope of the duties of the relevant employee.

*Third*, the doctrine of delegation. The delegation of authority by the employer to his subordinates is a justification for being able to impose criminal responsibility on his employer for criminal acts committed by subordinates who have delegated such authority.

*Fourth*, the doctrine of identification. This doctrine teaches that to be able to take criminal responsibility to a corporation, it must be able to identify who committed the crime. If the criminal act is committed by personnel who have the authority to act as the directing mind of the corporation, then the responsibility falls on the corporation.

*Fifth*, the doctrine of aggregation. This doctrine teaches that a person is considered to aggregate (combine) all actions and all mental elements/attitudes of various relevant people in the corporate environment to ensure that all actions and mental elements are a criminal act as if they were all actions. and that mental element has been done by only one person.

*Sixth*, reactive corporate fault. This doctrine teaches that the corporation which is the defendant is given the opportunity by the court to conduct its examination, who is considered the most guilty and what actions the company has given to the person considered guilty. If the report of the company or corporation is sufficient, then the corporation is exempt from responsibility. If the corporate report is deemed inadequate by the court, then both the corporation and top leaders will be liable for criminal responsibility for the negligence of failing to comply with the court order.

It is not easy to determine the type of negligence by a health worker that is detrimental to someone and will be the responsibility of the hospital. If malpractice occurs, clarification should be made beforehand, including medical malpractice or medical malpractice. If it turns out to be medical malpractice, it will also be examined to what

extent health workers provide medical services according to standards. If health workers have performed according to standards, and there are no acts of negligence and are under their skills/competencies, it will be difficult to say that there is malpractice. With the existence of regulations that stipulate that the hospital will be legally responsible for the negligence of health workers. The hospital as the manager of public health services, by protecting patients and the community as well as protecting resources in the hospital, the hospital is the legally responsible party.

Malpractice in the medical sector committed by health workers still needs to be clarified. If malpractice in the medical field is in the form of intentional violation of the provisions of the criminal law, then this is the same as deliberately committing a criminal act. This will be the responsibility of the health worker individually to take responsibility for it. If malpractice in the medical field is in the form of negligence as regulated in criminal law (for example negligence that causes death, serious injury, or disease), then the individual health worker can be held accountable for this, or this negligence shall be accountable to the hospital. The hospital is responsible for the negligence of this health worker if the health worker is a worker from the hospital. The hospital is responsible for the negligence of health workers, this is under the provisions of Article 1367 paragraph (3) of the Civil Code, "That employers and those who appoint others for their affairs are responsible for the losses issued by the servants. or their subordinates in doing the work for which these people are used".

Health workers are workers in the hospital, so the hospital is responsible for the actions of health workers that harm patients. The provisions of Article 1367 of the Civil Code can be used as a reference for the hospital's responsibility for the health worker's actions. This is under the respondeat superior doctrine. This doctrine implies that the employer is responsible for the actions of the servants for whom he is responsible, including actions that cause harm to others. With the Respondeat Superior doctrine, it is a guarantee that compensation is given/paid to patients who suffer losses due to medical action. In addition to this doctrine, legally and injustice requires a

careful attitude from health workers. A description of the negligence of health personnel in the hospital and their accountability is shown in the chart. The explanation of the chart is as follows.

*First*, if there is a suspicion of malpractice by health workers in the hospital, then there is an indication that there has been medical malpractice and/or professional malpractice in the medical field. *Second*, medical malpractice occurs because these health workers violate the ethical discipline of the medical profession, and will be examined by the Honorary Council of Indonesian Medical Discipline and will impose performance coaching sanctions on these health workers. *Third*, medical malpractice committed by health workers can be either accidental or deliberate. If this medical malpractice causes losses, then the hospital will be responsible for the negligence of health workers who cause harm to the person/patient. *Fourth*, if this medical malpractice is intentional or negligent, which constitutes a violation of criminal law, then the health worker can still be brought to court to be responsible for the negligence or deliberate action and will be subject to criminal sanctions in force.

The Hospital Law was made to provide more certainty in the delivery of health services, as well as to protect the community and protection for resources in the hospital. Besides, the Hospital Law stipulates that the hospital will be held legally responsible if there is the negligence of a health worker that causes harm to the community or patient.

There is a provision that the hospital is responsible for someone's loss as a result of the actions of health workers, this is a request that the hospital is responsible for the actions taken by its subordinate professional officers either as a permanent or temporary status, except for those who carry out professional duties as guests (Nasser M., 2016). Besides, this provision on hospital responsibility is intended so that there is a guarantee of compensation that must be obtained by the sufferer, and as a control so that the hospital applies caution. With the provision of the hospital being responsible for the negligence of this health worker, it is an opening drum that the hospital is open to the public to be sued if the community feels that they are being harmed because of the negligence of health workers.



As a follow up of this provision, the hospital will do several things. *First*, forming a set of assistant directors such as a legal commission, to handle legal aspects related to matters. *Second*, to carry out accreditation of professional and health workforce resources. Accreditation is carried out openly for the public in the interest of improving the quality of health services. *Third*, fulfill the patient's basic rights, which consist of the right to information, the right to give consent, the right to medical secrets, the right to a second opinion; and fourth, implementing the health doctrine, namely the procurement of medical records, holding the right to consent to medical action (informed content) and controlling medical secrets (Soedjito & Atmoredjo, 2013).

This is done to determine the clarity and standardization of the formulation variegated, as well as with its exceptions. The clarity in terms of medical records is needed so that it is known the methods that have been done and it will be seen that negligence has occurred or has taken action due to a medical risk.

The hospital will be responsible for losses caused by the negligence of health workers as specified in the Hospital Law. This provision can be applied if the relationship between the health worker and the hospital is a worker and an employer. The health worker concerned is the worker/laborer at the hospital. If the health worker is not a worker, the hospital can avoid being responsible for the negligence of the health worker at the hospital. For example, a doctor is practicing together in a hospital.

The hospital can be sued as a result of the health workers' actions which are detrimental if several conditions are met (Bambang Heyanto, 2010). First, health workers are paid periodically / fixed honoraria which are paid periodically from the hospital. Second, the hospital has the authority to give instructions that must be obeyed by its subordinates. Third, the hospital has the authority to supervise health workers. Fourth, there is an error or negligence committed by health workers in the hospital, where the mistake or negligence causes harm to the patient. Fifth, the actions of health workers are carried out within their competence and under the supervision of the hospital, the hospital will be responsible for the actions of these health workers. If the action is outside the competence and not under the

supervision of the hospital, the hospital can evade responsibility.

Psychologically, it can affect health workers in providing health services for the community, they can act inadvertently or even arbitrarily. Health workers act this way because they think if there is negligence it will be the responsibility of the hospital. This impression can be understood because we often see it in the practice of health services in government hospitals. The actions of health workers in the form of criminal malpractice will still be accountable to the health workers concerned (Putra, 2020).

Hospital owners usually do not manage health services in the hospital. This resulted in the community would file a lawsuit against the negligence of this health worker, be submitted to the hospital owner or the hospital manager. Even though there is a superior response doctrine, it is not easy for patients and their families to file a lawsuit, because it must first be known which parts are included in the therapeutic agreement with doctors and which parts are included in the contract with the hospital. This will determine who will be responsible, whether the doctor is private or is the hospital's responsibility. Patients will find it difficult to determine the position of a doctor/health worker who works in the hospital. The position of a doctor/health worker acts as a superior or as a helper, as a subordinate or not a subordinate to the hospital. If it turns out that the doctor/health worker is not a subordinate to the hospital, then the hospital can not be responsible.

The patient will file a lawsuit against the hospital if the patient knows and feels aggrieved by the actions of health workers at the hospital. It is not easy for patients to claim that these losses are the result of the actions of health workers. It could be that the disaster that befell the patient was unexpected by the health workers. Health workers have made appropriate and possible efforts, and calamities/losses continue to befall the patient, so this does not include negligence by health workers. Patients must know the medical record so that they can know the forms of actions that health workers take to them.

## Conclusion

Based on the above discussion, it can be concluded that mistakes include deliberate

intentions and negligence, while in a narrow sense, mistakes can be interpreted as negligence. Pregnancy is an error in outward action which indicates a certain mental state, but on the other hand, it is the inner state itself. So it can be said that negligence includes all meanings of error in a broad sense that is not in the form of intent. *Dolus* and *culpa* are two opposite poles. *Dolus* perpetrators want consequences punishable by punishment, while *culpas* do not want consequences deemed inappropriate by legislation. A broader and deeper view of the relationship between patient and doctor that the relationship between patient and doctor is a relationship that cannot stand alone but as part of the overall relationship between health care and society. The relationship between doctor and patient that results in consent because in giving and receiving medical care as something that can be justified in society. Regarding the relationship between doctors and hospitals, there are several models of relationships that can occur, namely doctors as employees, doctors as attending physicians (partners), and doctors as independent contractors. It is not easy to determine the type of negligence of health workers that harm someone and will be the responsibility of the hospital. If malpractice occurs, clarification should be made beforehand, including medical malpractice or medical malpractice. If it turns out to be medical malpractice, it will also be examined to what extent health workers provide medical services according to standards. If health workers have performed according to standards, and there are no acts of negligence and are under their skills/competencies, it will be difficult to say that there is malpractice. The hospital will be legally responsible for the negligence of health workers. The hospital is the manager of public health services, by protecting patients and the community as well as protecting resources in the hospital and is legally responsible.

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