



Risk Analysis of Malpractice at Central General Hospital Friendship Jakarta

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Abstract. In the world of health services, many risks may be used as legal cases, ranging from the arrival of patients' data collection until patients leave the place of service. Europe and America have characteristics of different types of malpractice incidents, and in Asia, there are both developed, developing, and underdeveloped countries. This study aims to examine and analyze the prevention of malpractice risk and the mechanism of malpractice risk at Friendship Center General Hospital. The research methods used are empirical and conceptual juridical research methods. Researchers use literature studies as a tool for collecting research materials. The results of the study found that Permenkes 11 of 2017 states that Patient Safety aims to improve the Quality of Service in health Service Facilities through the application of Risk Management in all Aspects of Health Services, which means that it is expected that with the application of good Risk management, the risk for complaints that lead to malpractice reporting in any form can be suppressed in such a way. Although the application of standard operating procedures in hospitals, the risk of malpractice complaints is still possible due to many things from various angles that cannot be explained in the regulations or cannot be explained due to other things regarding the ability of doctors/service officers to convey information about problems or obstacles obtained at the hospital including facilities and other unwritten rules, So even though it has been prepared in such a way, the risk still occurs.

Keywords: Risk, Malpractice, Communication, Hospital, Management

INTRODUCTION

In today's world of health, there is more and more information about the risk of malpractice from all corners of the world, due to the faster information systems such as social media and electronic news. This has an impact on the performance of service providers and or is increasingly a good concern for the Government because it also has an impact on the performance of policy makers and also the community in all fields and places. In Asian countries, China in 5 years namely 2010 – 2015 there were 13,620 cases regarding one side namely malpractice in medical and it all went to court, with the most severe cases as many as 4111 cases of which caused death, China is a large country in Asia with the best system remains at risk of malpractice.

In Indonesia with the existence (PMK No. 12 Th 2020 on Hospital Accreditation, 2020) which hints in article one in point 3 that "A hospital is a health service institution that provides plenary individual health services that provide inpatient, outpatient, and emergency services." So that in every provision of health services, accreditation or fulfillment of health standards is required so that mistakes do not occur ending in malpractice. In Indonesia, malpractice is often not or not only a medical problem but reaches the administrative area and is often a question issued by patients or families or lawyers who will participate in solving cases at the hospital.

RSUP Friendship is a government hospital that has been established since 1963 precisely on November 7 which is the result of a gift from the State of Russia as a sign of friendship between Indonesia and the State of Russia, this hospital is a National Central General Hospital affiliated with the University of Indonesia with specialization in the field of Respiration, and is a national reference for Respiration which of course has a lot of risks that may arise for events Malpractice. (Ministry of Health, 2022).

Of the many cases in suspected malpractice, almost 99% can be resolved peacefully or mediated. However, the risk that can be obtained when there is a risk of Malpractice is not only to service providers but will also be a problem to Health Service Providers plus the high use of Social Media in this country. This situation will certainly cause other risks that arise, it seems that customer distrust in this case service users even to the closure of health service facilities.

Where in article 46 of Law no. 44 of 2009 concerning Hospitals it is clear that the Hospital as a place of providing health services is responsible for all losses caused by negligence by health workers in the Hospital or in general can be said to be a joint responsibility, where the one who does the error is the service provider but the affected is not only the service provider but to the institution where the enrichment giver is on duty or carrying out its activities . (Sulistiyanta et al., 2020).

As a Vertical Hospital, in the sense that it is a Technical Implementation Unit Hospital of the Ministry of Health, Friendship Hospital is a Type A hospital with Exceclency in the field of Respiratory and also as a National Respiratory Referral Center cannot be separated from the risk of Malpractice which is likely to be at risk to the good name or reputation that has an impact on the performance of the institution above it, namely the Ministry of Health, and in this case it can be seen from the assessment manually in the sense that it can be obtained from the Assessment of Customer Complaints or Social Media assessments in this case can be seen in Google Reviews even though the assessment may not be objective (Ministry of Health, 2022).

LITERATURE

In working on this thesis leads to several theoretical frameworks on Malpractice, agreements, approaches to effectiveness in solving Malpractice problems and peace theory. How is an event called an agreement? In the Civil Code article 1320 it is explained that there are several conditions for the occurrence of an Agreement, where it is certain that there is an agreement between the parties, how not, because there is no agreement if there is no person who agrees to promise, moreover there is an element of coercion that is definitely invalid if finally an agreement occurs can be seen in article 1321 of the Civil Code, So that all treaty activities can be said to be invalid if things such as coercion, fraud and or error occur. (Khairandy Ridwan, 2013).

According to the subject, the agreement itself is nothing but agreement in the sense that the two people agree to do something so that the word consent can also be interpreted as an agreement. (Sobekti, 2005) In addition, an agreement itself must meet the elements of competence of the parties where in accordance with article 1329 of the Civil Code, where it is certain that the person who makes the agreement must have qualified abilities, therefore in the hospital in accordance with the regulations in writing *informed consent*, the decision maker is a patient if still capable and / or family or people who are given trust in making the Action agreement. Overeenkomst has a meaning in 3 notions of Verbentennis, namely engagement, debt and agreement and can also be an agreement, where in the Civil Code article 1313 states an agreement where the actions of one or more people bind themselves to one or more people (Raharjo, 2009).

Therefore, for the occurrence of a covenant there is a will to be done that is promised, so that according to the theory of Will or *Wills Theorie*, if there is no agreement in accordance with the desired will, there is no agreement and it can be said that there is no agreement, then in the theory of agreement also applies the theory of Statement or *Verklaring Theorie* Where there is a statement made in making an agreement, because the statement will later be binding on both parties to the agreement. Although in history the Dutch used the term to control land in the sense of *Domein Verklaring*, all were controlled by the state in this case the Dutch government.

In health services, in providing services to patients, what is said to be a therapeutic agreement is a relationship between doctors and patients, where patients give authority to doctors to provide health services to these patients, in accordance with their expertise and skills, this is in accordance with law number 36 of 2009, concerning Health. In addition, in its implementation there are other theories about this agreement specifically in health services, one of which according to Cecep Triwibowo in his book Health Ethics and

Law (p. 64), Therapeutic Agreement, is an engagement made between doctors and health workers with patients, in the form of a legal relationship that gives birth to rights and obligations for both parties. Which means that every activity between patients or service users and service providers, in this case one or more than a doctor, has been regulated in law.

Malpractice is the negligence of a doctor in using the level of skill and knowledge commonly used in treating patients or injured people in the same size in the same environment" this means that a doctor in handling patients must have adequate competence and ability to provide services (Hanafia & Amir, 1999). In Cecep Triwibowo's book states there are several things related between doctors and patients, as found on pages 67-68, which are as follows:

1. Doctors and Health Workers:

In Article 1 point 1 of Law Number 36 of 2014 concerning Health Workers ("Health Workers Law"), what is meant by health workers is everyone who devotes themselves to the health sector and has knowledge and / or skills through education in the health sector which for certain types requires authority to carry out health efforts. Article 11 paragraph (1) of the Health Workers Law states that health workers are grouped into:

- a) Medical Personnel (Removed);
- b) Clinical Psychology Personnel;
- c) Nursing Personnel;
- d) Midwifery Personnel;
- e) Pharmaceutical Personnel;
- f) Public Health Personnel;
- g) Environmental Health Workers;
- h) Nutrition Personnel;
- i) Physical Therapy Personnel;
- j) Medical Technicians;
- k) Biomedical Engineering Personnel;
- l) Traditional Health Workers; and
- m) Other Health Workers.

2. Patient: A sick person who is cared for by doctors and other health workers in a practice or hospital.
3. Hospital: Health service facilities.

So that naturally, the agreement included in the Malpractice area becomes even wider than expected, or known so far by ordinary people. This is what causes that the risk of malpractice is likely to occur more widely, such as in places where researchers work who have faced complaints that are at risk of complaints of medical malpractice that actually occur due to errors in the administration of service delivery. According to Achmad Ali, to find out how far the approach to legal effectiveness is to measure the extent to which the rule of law is obeyed or disobeyed, this will greatly affect the effectiveness of a law Soedjono Soekanto explained that there are 5 things in the theory of legal effectiveness, namely:

- 1) The legal factors themselves (legislation)

Legal factors greatly affect the effectiveness of the approach where the influence of legislation or law on the norms of life greatly influences, for example when talking about living systems where in regional regulations related to norms in areas where the laws or laws used are in line with the norms that apply in society, besides that existing regulations are in accordance with existing juridical norms. In hospitals where researchers work, this is very important, especially in providing services and information to service recipients, where as a National Respiration Referral Hospital, of course, the ability to carry out rules or provide services in accordance with applicable norms and / or where the recipients of services come from. So that the rules and procedures that will be carried out can be known and understood by service recipients and families.

Article 29 of Law No. 36/2009 on Health which reads that: "In the event that health workers are suspected of negligence in carrying out their profession, such negligence must first be resolved through mediation", therefore law enforcement officials should not bring cases of alleged malpractice to litigation. Because, this is in accordance with the mandate of the Law that must be carried out.

- 2) Law enforcement factors

In this case, it relates to the parties who form or apply the applicable law. Therefore, in this case, a reliable apparatus is needed, so that the officer or officer can perform his duties reliably. What is meant by reliability here is the ability professionally in carrying out his work, of course, accompanied by a good mentality as well. Inside the hospital there are also officers or employees who are tasked with monitoring activities that may be at risk of course for the occurrence of Malpractice, especially at the Friendship Center General Hospital in addition to KS Hukormas (Organizational Law and Public Relations) there is also what

is called the Ethics and Law Committee which functions as an input or information provider to the Hospital Leadership in solving problems and or implementing existing rules and will be in Hospital.

a. Factors of facilities or facilities that support law enforcement

Facility factors in the form of facilities and infrastructure that can be used as a tool to achieve legal effectiveness. In the Friendship Center General Hospital, it is a hospital with national and international classes, where upgrading facilities and infrastructure in increasing effectiveness in law as a tool to achieve effectiveness is always improved, one of which is a digitalized information system, and others.

b. Community Factors

In this case, the tendency of Indonesian people's habits that often make actions carried out by service providers and risk Malpractice as soon as possible is brought into the realm of Litigation. This tendency is due to the public's incomprehension of the existing regulations in this case has been stated in article 29 of Law number 36 of 2009, which states that for health workers who are suspected of negligence in doing or carrying out their profession, the settlement is through mediation first, so it is not directly directed to the realm of Litigation.

c. Cultural Factors

The culture in Indonesia which is very diverse often makes a problem not continued because of the culture of sincerity and or nerimo, and besides that there is another culture it is time or save the problem that causes When there is a case leading to the risk of malpractice will not necessarily be revealed. At Friendship Hospital, there are several cases that seem to be resolved before boarding or only internally the patient is limited to questions and answers about the case asked, because indeed some cases that have been risky have indeed been received by patients or service recipients.

So when viewed from the theory of the effectiveness approach, that many factors are interrelated in the information system or the continuation of each malpractice risk that causes the risk of malpractice to rise to the surface. In Indonesian dictionary, peace can be interpreted as the cessation of hostilities or even about peace, this is done with several actions in the settlement of peace, as for this by carrying out several initiations in peace. In the world of health, it is known as conflict management.

In conflict management theory, efforts are made so that conflict risks can be avoided, In the statement in article 29 of Law number 36 of 2009 there is an explanation if in carrying out the profession then there is negligence (unintentional) then what is done at the beginning is to carry out mediation that functions so that peace occurs, and this becomes a guide in every activity carried out in health care places, especially in hospitals where to avoid the possibility of legal risks, then provided several sections or

committees that are monitoring all activities carried out by each service provider so that there is no risk of malpractice and indications of continuing risks in court.

The risk of Litigation for Health services is very large because it will cause not only the good name of health service providers, but will have an impact on the place of service providers and even what is not desirable is the loss of public trust in health services in Indonesia. In the theory of Malpractice itself there is a concept of violation of Professional Duty by a professional consisting of the concept:

- (a) Standard operating procedures
- (b) Violation of professionalism
- (c) Relationship casualty.
- (d) Loss or injury.
- (e) Legal Liability.

1) Standard Operating Procedures

Is a rule or standard that applies to every activity carried out by a Professional in carrying out his activities in this case for officers on duty at the Hospital.

2) Professional Misconduct

If a professional does not carry out his professionalism correctly.

3) Relationship casualty

There must be evidence of a relationship between the breach of professional obligations and the injury or loss suffered by the victim.

4) Loss or injury

Malpractice can lead to loss or injury for this requires strong documentation.

5) Legal Responsibility

If this malpractice is proven then the professionals involved may be subject to legal liability.

METHOD

This paper will explore the urgency of the Asset Forfeiture Bill in terms of the politics of legislation and then be limited to discussions on the direction of law enforcement that is considered responsive, especially regarding institutions that have authority in implementing the law. This paper is a type of doctrinal research with a concept approach, a statutory approach, and a comparative approach. In this study, the methodology used is related to analysis and construction in solving a problem or risk of a case in a health service place, systematically and consistently. So that in the research process, analysis and preparation of

data that has been collected and processed are carried out (Soekanto, 1979). So that there are pictures of problems that arise and will be at risk to legal problems later. In writing this thesis, research was carried out by observation of case data in the area where the researcher did the work, namely at the Friendship Center General Hospital.

DISCUSSION

In the hospital service has 2 (two) flows, namely Outpatient and Inpatient, the two services can be related and can also be separate, because when patients who enter from outpatient care allow further treatment to be carried out and then sent to Inpatient , although the flow will go through the Emergency Department for further assessment to be sent to the Inpatient depending on the needs of care as well as when patients who are treated and then allowed to go home, then control will be carried out in Outpatient Care, to find out the extent of recovery / results of treatment that has been done.

In activities at the hospital known as Morning Report, which serves to evaluate all conditions of patients at risk every week, besides that every case that does require greater effort will be held called Tuesday Clinic which will be brought in all parts of the service so that problems or obstacles experienced can be known and there is a way out.

The standard operating procedures issued in 2021 aim to:

1. Discuss difficult / multidisciplinary cases in order to find the best solution based on input from various parties.

From the initial goal, care is taken in assessing all activities including risks carried out in the Hospital and involving many parties, so that an assessment can be obtained not only from one side of the service provider but from various expertise or teams that cooperate in the implementation of activities including actions carried out from beginning to completion Actions / service activities carried out.

2. Improve service quality while maintaining quality control and cost control in accordance with *evidence-based medicine* In the sense that every activity related to improving service quality, must follow the signs so that service quality can be measured as well as financing risks that can still be controlled so that uncontrolled financing does not occur.

This evaluation is conducted three times a week and is conducted under the leadership of the Medical Committee and will then be reported by the Medical Director and President Director. In addition, the evaluation using the Morning report has the following criteria:

- 1) Hospitalization more than 7 days.

Here it can be seen how the problems that cause the extension of services provided to patients. This can be caused by many things such as the disease requires a long treatment, or there are other causes that cause prolonged treatment.

2) Multidisciplinary cases / difficult cases.

In this case, it is discussed cases that use not only specialties, but can be for joint patients because the cases served are difficult cases. In cases like this, it is common to meet more than once, it is even possible to call from experts outside the hospital, so that problems can be found and resolved.

3) Not a palliative case / *end of life* / *terminal state*.

Cases whose treatment is not for healing, usually given so that the treated patient will be calm and / or in patients who want to end their lives and not also for cases in the last patient / can no longer be treated, so that the therapy given leads to the patient's readiness to face the end of life.

4) *High cost*.

In the sense that the costs used are high more than the calculations commonly used and usually use Ina Cbg's rates. This is especially true for patients who tend to use high financing in their services, it can be caused by the use of high quality drugs or the use of high-priced equipment, so that it can affect other financing including disrupting hospital finances.

5) Problem Prone Case

In this case, it is important to do Morning Report, because the problems that may occur in this patient can be cases with the risk of malpractice, financial problems, and others. In the observations observed by researchers, it is found in cases related to social or familial, which may result in wider or widening things that result in legal problems.

6) And the case presented is a case that is indeed treated.

This activity explains that every activity carried out in the hospital is closely monitored so that there is no risk of malpractice, although on the way the risk can still occur. In the case of reporting or raising, there are cases that are issued data by the Patient Service Manager (MPP) / Case Manager, so that the assessment carried out is graded and has gone through assessments in the field. Registration number OT.02.02/6.1/19 regarding standard operating procedures Morning Report.

In this case, services are needed after services are carried out at the hospital, can be in the form of home care and can also be in the form of communication after services are provided. This is common in services to patients with geriatrics, patients with end state / terminal and other patients who need after-service services at the hospital. Basically, all activities carried out by Case Managers have a handle in the form of operational standards, in this case listed in document number OT.02.02/1.2/060 regarding Case Manager Standard Operating Procedures.

Every implementation carried out by the Case Manager refers to the Clinical Practice guidelines that apply in the Hospital, and the Clinical Pathway which contains standards for handling patients from entry to exit which includes from history to therapy carried out. In the complaint service at the Friendship Center General Hospital, in the guidelines issued by the Hospital regarding the 2018 Public Relations and Marketing Installation Service guidelines and in accordance with applicable standard operating procedures. Complaint itself is a form of statement of dissatisfaction, customer disappointment with unmet needs and expectations. In the sense that there is a discrepancy between the wishes and desires of customers towards the Hospital, In the case of complaints or complaints from consumers, the party responsible for its management is under the Directorate of Planning and General, with the Coordinator of Legal, Cooperation and Public Relations.

From the context of complaint reporting, there are rules or SPO that apply, namely:

- a. Any complaint can be given directly in writing and orally to the customer care of RSUP Friendship.
- b. Every complaint filed is accompanied by personal information that provides the complaint, to be valid.
- c. Every complaint that arrives, will be resolved at customer care and if not, will be sorted will be resolved according to the risk and which part is complained.
- d. All types of complaints will be reported to the General Board of Directors and Organizations.
- e. After sorting is done, the complaint will be submitted to the area or section according to the criteria sorted.
- f. Complaint criteria consist of:
 - a) Red by Leadership
 - b) Yellow by Medical → attention
 - c) Green by each section, usually related to facilities

In some cases, when observation is made in the treatment is obtained When there is a patient situation that requires information but the service provider does not explain well or in the sense of the word speak with high intonation so that the patient does not receive emotional tendencies, this is important When facing problems like this, the ability to regulate emotions both likes, difficulties and even sorrow. Therefore, in dealing with it often a service provider in this case the doctor is usually accompanied by a nurse in providing information to the patient/patient's family and/or the patient's guardian, so that in communication there are those who participate in monitoring statements or information given to patients.

No less important after the steps above is handling the risk, there are several ways to deal with the risk of malpractice, namely by:

- a. Avoiding risk by deciding not to start or continue with activities that pose a risk. This is by avoiding the possibility of risks occurring, namely by not doing handling that cannot be done or patients are referred to other places that have better abilities in Human Resources and Other Resources.
- b. Taking or increasing risks to take advantage of opportunities. For the above, it is usually done if there is no one else who can do the service, so it is inevitably handled by continuing to take a personal approach or being carried out by informed consent so that service providers are safer.
- c. Eliminate sources of risk. This can be done by referring patients to a more qualified place so that the risk of being moved to another place.
- d. Changing possibilities. For this many things can be done but discussed with the patient or the patient's family.
- e. Change the consequences. This is if the consequences that occur are likely in the financial field, here every doctor already has insurance that will back up the financial risks that occur.
- f. Sharing risks to other parties or certain parties (including contracts and risk financing). This is by doing Cooperation in carrying out Joint Treatment Actions, it can be by sending experts who work at the Hospital or teams from the Hospital working on actions at other Hospitals that have collaborated before.
- g. Sustain risk with decisions. For this if nothing is done because those who have the ability are only in the hospital or their own place of service.

In an effort to anticipate the occurrence of Malpractice risk is to control every activity so that the risk of Malpractice can be anticipated. The steps in designing control activities are as follows:

- a. Based on the results of the risk assessment, the risk owner identifies whether existing control activities have been effective to minimize risk.
- b. Then each existing control activity needs to be assessed for its effectiveness in order to reduce the probability of risk occurrence and reduce the impact of risk (mitigation).
- c. In addition, it is also necessary to note the presence/absence of alternative controls (*compensating control*) that can reduce the occurrence of risks.
- d. For risks that have no control activities or exist, but are considered less or ineffective, it is necessary to design new control activities/revise existing control activities. The last and important thing is to implement control activities that have been designed in managing risk.

CONCLUSION

Based on the findings of the Researcher, it was found that even though the application of standard operational procedures in hospitals, the possibility of the risk of malpractice complaints is still possible due to many things from various angles that cannot be explained in the regulations, or cannot be explained due to other things regarding the ability of doctors/service officers to convey information about problems or obstacles obtained at hospitals including facilities as well as other rules that are not written because they concern the management ability of officers in the field in regulating flow at the hospital, so that even though it has been prepared in such a way, the risk still occurs.

In addition, the ability to explain something good about the condition of readiness ranging from administration, readiness in service, readiness in accommodation, readiness in the payment system used, preparation of other services to the readiness of patients, family and family guardians, must be really mature, this is in accordance with everything prepared by the Hospital as one of the protection to the community in this case patients who use the services and services of the Hospital in this case doctors and dentists.

BIBLIOGRAPHY

- Ben Gobel. (2022). *Medical Malpractice Statistics 2022*. <https://yourpghlawyer.com/medical-malpractice-statistics-2022>
- Hanafia, Y & Amir, A. (1999). *Medical Ethics and Health Law*
PMK No. 12 Th 2020 ttg Akreditasi Rumah Sakit, 3 (2020). [https://jdihn.go.id/files/898/PMK No. 12 Th 2020 ttg Akreditasi Rumah Sakit.pdf](https://jdihn.go.id/files/898/PMK%20No.%2012%20Th%202020%20ttg%20Akreditasi%20Rumah%20Sakit.pdf)
- Kementerian Kesehatan RI. (2022). *Keputusan Menkes HK.0202/I/3664/2022 tentang HBL_FINAL RSUP Persahabatan* (p. 98). kementerian Kesehatan Republik Indonesia.
- Khairandy Ridwan, P. (2013). *Buku HUKUM KONTRAK* (UII (ed.)). UII. [https://law.uui.ac.id/wp-content/uploads/2013/12/Hukum-Kontrak-Prof- Ridwan-Khairandy-FH-UII 230.pdf](https://law.uui.ac.id/wp-content/uploads/2013/12/Hukum-Kontrak-Prof-Ridwan-Khairandy-FH-UII%20230.pdf)
- Mamudji, S. (2005). *Metode Penelitian dan Penulisan Hukum*. Badan Penerbit Fakultas Hukum Universitas Indonesia
- Paarz, W. (2021). An Analysis of Medical Malpractice Suits By State. In <https://www.weisspaarz.com/>. [https://www.weisspaarz.com/medical- malpractice-suits-analysis](https://www.weisspaarz.com/medical-malpractice-suits-analysis)
- Raharjo, H. (2009). *Hukum Perjanjian di Indonesia* (1st ed.). Pustaka Yustisia. rose and merry pitchburg. (2020). No Title. *Law*
- Sobekti, P. (2005). *hukum perjanjian* (21st ed.). intermasa. Soekanto, S. (1979). *Pengantar Penelitian Hukum*. UI
- Soekanto, S. (2010). *Pengantar Penelitian Hukum*. Universitas Indonesia
- Studdert, D. M., Spittal, M. J., Zhang, Y., Wilkinson, D. S., Singh, H., & Mello, M. M. (2019). Changes in Practice among Physicians with Malpractice Claims. *New England Journal of Medicine*, 380(13), 1247–1255. <https://doi.org/10.1056/NEJMsa1809981>
- Sulistyanta, ', Hartiwingsih, ', Ginting, R., Budyatmojo, W., Subekti, ', Setiyanto, B., Pratiwi, D. E., & Fitriono, R. andi. (2020). Implikasi Pemahaman Warga Masyarakat Terhadap Malpraktik Medis Dalam Kaitannya Dengan Cita Penangan Korban Malpraktik Medis Yang Berkeadilan. *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan*, 9(3), 224. <https://doi.org/10.20961/recidive.v9i3.47416>