



Legal Responsibility of Hospitals for Doctors' Misdiagnosis of Patient's Disease Based on Law No. 17 of 2023 concerning Health

Feni Rose Purba¹, Roida Nababan^{2*}, Besty Habeahan³

Fakultas Hukum, Universitas Nommensen, Medan

Corresponding Author: Roida Nababan Roidanababan081@gmail.com

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ABSTRACT

A doctor's misdiagnosis can cause harm to the patient. Hospitals as health service institutions have legal responsibility for doctors' misdiagnoses. This study aims to analyze the legal responsibility of hospitals for doctors' misdiagnoses of patient illnesses based on Law no. 17 of 2023, analyzes patients' legal efforts against misdiagnosis from a juridical and practical perspective. The research results show that patients can take legal action through administrative, civil and criminal channels. And research shows that hospitals have legal responsibilities for doctors' misdiagnoses, including compensation and restoring the patient's health. Article 193 of Law Number 17 of 2023 concerning health provides a strong legal basis for enforcing hospitals' legal responsibility for doctors' misdiagnoses.

INTRODUCTION

Hospitals are health service institutions that are responsible for the safety and health of patients. In carrying out their functions, hospitals are required to ensure that health services are carried out in accordance with applicable professional standards and codes of ethics. In the health service system in Indonesia, hospitals play an important role as institutions that provide health services to the community. As a health institution, hospitals are not only responsible for providing adequate facilities and medical personnel, but also have legal responsibility for all forms of medical actions carried out by health workers under their auspices. One important aspect of health services is the accuracy of the diagnosis made by the doctor. The right diagnosis determines the success of the patient's treatment and healing, one issue that often becomes a problem in the world of health is misdiagnosis by doctors which can have serious impacts on the health and safety of patients. Misdiagnosis is a complex problem because it involves various factors, including the competence of the doctor, the patient's condition, and the quality of the facilities and medical equipment available. The impact of this misdiagnosis is not only felt by the patient physically, but can also affect the psychological, social, and financial aspects of the patient. Health is a basic human right guaranteed by the state, in order to fulfill this right, hospitals and medical personnel, including doctors, have an important role in providing professional and quality health services.

Health services are one of the main pillars in creating and maintaining public welfare. Article 193 of Law Number 17 of 2023 concerning health, provides a legal basis for patient protection and the responsibilities of health workers and health institutions. Article 193 of Law Number 17 of 2023 states that hospitals are legally responsible for all losses caused by the negligence of hospital health human resources. Article 38 paragraph (2) of Law Number 17 of 2023 concerning Health states that hospitals are required to provide quality, safe health services in accordance with established service standards.

The hospital is responsible for all actions of medical personnel and other health workers working in the hospital, including misdiagnosis. The hospital is legally responsible for all losses arising from negligence committed by health workers under its auspices. The hospital is responsible for losses experienced by patients due to negligence or errors by its medical personnel.

Hospitals as health institutions are responsible for the actions of workers under their control. Meanwhile, the legal responsibility of hospitals is also regulated in various regulations in Indonesia. The existence of related Minister of Health Regulations (Permenkes) strengthens the legal framework in order to provide protection for patients and ensure that hospitals carry out their functions in accordance with the law and ethics. Doctors have a very crucial role in the health service system, doctors function to identify early symptoms of the disease, provide an accurate diagnosis, and determine the appropriate treatment steps based on the patient's condition. Doctors must provide optimal service, an inappropriate diagnosis process can lead to treatment errors, which have the potential to worsen the patient's condition. Based on Law No. 17 of 2023 concerning health, every medical personnel, including doctors, has an obligation

to provide medical services in accordance with professional standards, science, and developing health technology.

There are several examples of cases of doctor's misdiagnosis of a patient's illness, one of which is; a patient comes to a hospital with complaints of abdominal pain and high fever. After conducting a physical examination and some basic laboratory tests, the treating doctor diagnosed that the patient had typhus and provided appropriate treatment. However, after several days of treatment, the patient's condition did not improve and even worsened, an emergency, not a treatment for typhus, finally the patient was referred to another hospital for further examination, at the second hospital a series of additional tests such as CT scans and more in-depth blood tests were performed, the doctor found that the patient was actually experiencing complications of acute appendicitis which should have required surgery.

Misdiagnosis by a doctor that results in patient harm can be considered a violation of obligations. Hospitals as health facilities have a responsibility to ensure that every medical personnel working in them is competent and meets medical service standards. If there is a misdiagnosis by a doctor working in the hospital, the hospital can be held responsible in terms of supervision and provision of adequate facilities for the doctor in carrying out his duties. If the doctor's error occurs during legitimate practice in the hospital, the hospital can be held responsible for the actions of the doctor concerned. If the misdiagnosis is related to a lack of facilities, inadequate procedures, or lack of supervision, the hospital can be held responsible for the error. If the error results in patient harm, legal steps can be taken in accordance with the provisions applicable in Law No. 17 of 2023 concerning Health.

The hospital is responsible for any losses experienced by the patient caused by medical errors or negligence in health services. Based on this principle, the hospital is obliged to provide compensation if there is a violation of the patient's rights that results in physical or material harm to the patient. This is regulated in the Civil Code (KUHPerdata) and the Medical Practice Law. The legal relationship between hospitals, doctors, and patients basically involves several aspects that include the obligations, rights, and responsibilities of each party, all three are intertwined in a relationship that is interrelated and regulated by law. Patients have the right to safe, quality medical services that comply with medical professional standards. This right is regulated in Law Number 17 of 2023 concerning health, and the regulations of the Minister of Health regarding patient rights. Doctors' professional standards are required to provide services based on established professional standards and competencies. This standard is regulated by medical professional organizations such as the Indonesian Doctors Association (IDI) and regulatory bodies. Types of diagnostic errors, diagnostic errors can occur in the form of a wrong diagnosis (misdiagnosis). The patient's disease is diagnosed as another disease, late diagnosis, the disease is only detected after the condition worsens, incomplete diagnosis, not considering all symptoms or relevant factors even though there are legal provisions that regulate it, the implementation of the hospital's legal responsibility for the doctor's misdiagnosis is often debated. In practice, patients often have difficulty

demanding their rights due to a lack of understanding of the applicable legal mechanisms or obstacles in proving a misdiagnosis. Patients as the injured party have the right to legal protection, while hospitals and doctors must be responsible for the actions taken. This study aims to examine the hospital's legal responsibility for the doctor's misdiagnosis, analyze related regulations, and provide recommendations so that misdiagnosis can be minimized.

LITERATURE REVIEW

Doctor's misdiagnosis is a serious health problem and can cause harm to patients. Various definitions of misdiagnosis have been put forward by experts. According to Sutanto (2019), a doctor's misdiagnosis can be defined as an error in diagnosing a patient's illness, either due to lack of knowledge, lack of experience, or lack of attention. Meanwhile, according to the Indonesian Ministry of Health (2020), a doctor's misdiagnosis is an error in diagnosing a patient's illness that can cause harm to the patient, including death, injury, or other losses. Furthermore, the World Health Organization (WHO) defines a misdiagnosis as an error in diagnosing a patient's illness that can cause harm to the patient, including death, injury, or other losses (WHO, 2019). From these definitions, it can be concluded that a doctor's misdiagnosis is an error in diagnosing a patient's illness that can cause harm to the patient.

Diagnosis is the determination of the type of disease by examining (examining) its symptoms. Misdiagnosis or wrong diagnosis is when someone is given a diagnosis of a certain disease but does not necessarily have the disorder. This can be caused by various factors, including lack of information, errors in interpreting symptoms, or limitations in medical knowledge. Misdiagnosis is a medical error that occurs after a diagnosis procedure and intensive examination carried out on a patient by a doctor. Meanwhile, to be categorized as malpractice, the negligence committed by a doctor in making a diagnosis must first be considered whether the doctor has carried out his duties based on the professional standards he has or even if the doctor in question is proven to have made a mistake in diagnosing, but the medical actions carried out are in accordance with the regulations, then this is not included in medical malpractice/medical negligence or even if the doctor in question is proven to have made a mistake in diagnosing, but the medical actions carried out are in accordance with the regulations, then this is not included in medical malpractice/medical negligence

METHODOLOGY

According to John W. Tukaey, data is a collection of facts organized to support decision making. Data is used to present real-world reality objectively. And the data source is the subject from which the data is obtained by the researcher to answer questions in the study, thus the data source in this study was obtained from primary legal materials, secondary legal materials, and tertiary legal materials.

The data collection method in this study can be done through library research, namely research whose data collection is carried out by collecting data from various literatures. The literature studied is not limited to books but can

also be in the form of documentation materials, magazines, journals, and newspapers.

The data analysis used is a qualitative normative legal analysis, namely by referring to laws and regulations, relevant legal facts, and focusing on the understanding or legal regulations that apply at this time with existing legal problems so that valuable and objective research results can be obtained.

RESEARCH RESULT

Form of Legal Responsibility of Hospitals for Doctors' Misdiagnosis of Patient's Disease Based on Law No. 17 of 2023 concerning Health

In recent years, doctors' misdiagnosis has become a very important health issue and requires serious attention. Misdiagnosis can cause harm to patients, both physically, psychologically, and financially. Therefore, it is important to know the form of legal responsibility of hospitals for doctors' misdiagnosis of patient's disease. Law No. 17 of 2023 concerning health has emphasized that hospitals have legal responsibility for doctors' misdiagnosis. Article 13 of Law No. 17 of 2023 concerning health clearly states that hospitals are required to provide quality, safe health services in accordance with established service standards. The form of legal responsibility of hospitals for doctors' misdiagnosis of patient's disease based on Article 13 of Law Number 17 of 2023 concerning health is;

- Hospitals are responsible for the negligence of health workers working in hospitals.
- The hospital is responsible for its doctors, even though they are non-permanent doctors or visiting doctors,
- The hospital has the authority to provide guidance and supervision to doctors.
- The hospital is responsible for its doctors because there is a legal relationship between the hospital and the doctor and the Standard Operating Procedure (SOP) made by the hospital as a guarantee of quality for doctors and their medical actions.
- The hospital is responsible for the competence and authority of doctors working in the hospital.
- The hospital is responsible for the quality of hospital facilities and infrastructure.
- The hospital is responsible for the guidance and supervision of doctors through the Hospital Supervisory Board.

It can be concluded that the pattern of legal responsibility of hospitals regulated in the Hospital Law in its implementation can give rise to various interpretations. The nature of the hospital's legal liability pattern should not only cover a broad scope, but also be centralized, namely positioning the hospital as the center or axis in the legal liability pattern. If the regulations are applied consistently, the patient's lawsuit against the hospital should only be directed to the hospital and does not need to include the doctor who performed the medical action because the doctor is part of the hospital and is carrying out duties related

to the interests and legal obligations of the hospital. A centralized legal liability pattern can provide benefits for the hospital, namely so that the hospital prioritizes professionalism in carrying out its operations or business. Meanwhile, for doctors and patients, this liability pattern can provide legal certainty. Hospitals as a means of providing health services to the community involve doctors as subordinates or partners in carrying out health service duties for patients, so that if there is a lawsuit or demand from the patient due to failure in medical services at the hospital, the hospital is also responsible. The legal relationship between doctors and hospitals is an employment relationship, namely doctors who work as subordinates of the hospital who receive salaries from the hospital. In the relationship established between the hospital and the doctor, if a subordinate doctor of the hospital makes a mistake or is negligent, the doctor will be assisted by the hospital in providing compensation, provided that the mistake or negligence was committed in the hospital environment.

As previously explained, hospitals as health service facilities are obliged to share responsibility if there is a case of negligence or error made by a doctor in the hospital environment. This is due to the contractual relationship between the hospital and the doctor or other health parties. The responsibility of the hospital as an employer of a doctor who is a subordinate is also stated in Article 1367 of the Civil Code. Related to Article 1367 of the Civil Code, the hospital director shares responsibility if there is an error by the doctor who is his responsibility, this is called vicarius liability. With this principle, the hospital can be sued for errors made by its doctors (subordinates), as long as it can be proven that the doctor's actions were in the context of carrying out the hospital's obligations. In this case, the hospital led by the Director is also responsible for the negligence or errors made by the doctor to the patient. If the patient uses the legal realm as a means of resolution, then the hospital can also be said to have committed an unlawful act as regulated in Article 1367 of the Civil Code, on the grounds that the error made by the doctor was in his capacity as a hospital medical worker and the doctor also carried out his obligations on behalf of the hospital.

The hospital should also be held accountable for its error. The doctor's obligations are rights that must be received by the patient and vice versa, the patient's obligations are rights that must be received by the doctor or the hospital. The legal relationship in the contractual dimension has been emphasized in Article 280 paragraph 4 of Law of the Republic of Indonesia Number 17 of 2023 concerning Hospitals (hereinafter referred to as the Health Law) that the practice of medical personnel and health workers is carried out based on an agreement between medical personnel or health workers and patients based on the principles of equality and transparency. The legal relationship between a doctor and a patient gives rise to legal acts and gives rise to legal consequences, in a legal consequence the thing that cannot be separated is who is responsible, to what extent responsibility can be given. The failure to fulfill an obligation in a legal relationship is what then often causes conflict, the conflict that occurs is inseparable from the demands of responsibility as an effort that can be taken by the parties who feel disadvantaged. According to the provisions of Article 193 of

the Health Law, the hospital is legally responsible for all losses caused by negligence carried out by the hospital's health human resources. The limits of the hospital's responsibility are regulated in the provisions of Article 192 paragraph 1 of the Health Law, which states that the hospital is not legally responsible if the patient or his family refuses or stops treatment that can result in the patient's death after a comprehensive medical explanation. In the event that the hospital does not fulfill the obligations or administrative requirements, then based on Article 189 paragraph 2 of the Health Law, namely violations of the obligations as referred to in paragraph (1) are subject to administrative sanctions in accordance with the provisions of laws and regulations, administrative sanctions in the form of warnings, written warnings, non-extension of operational permits, and/or fines and revocation of permits. The authority to revoke operational permits lies with the state administrative court. There are several examples of cases related to errors in laboratory test results, which have been decided in Supreme Court Decision Number 300/K/Pdt/2010 and Supreme Court Decision Number 3571/K/Pdt/2015.

Security includes efforts to minimize the risk of infection, dangerous side effects, and other dangers related to health services. Hospital trust is measured by the feeling of well-being felt by patients while in the hospital, namely feeling safe and protected. The hospital is legally responsible for patient losses due to misdiagnosis by doctors and negligence of other health Human Resources (HR) in the hospital, as regulated in Article 447 paragraph (1)-(4) of Law Number 17 of 2023 concerning Health.

Forms of Legal Efforts That Can Be Taken by Patients for Doctors' Misdiagnosis of Patient's Disease

In this study, it was found that patients have several legal efforts to overcome doctors' misdiagnosis of patient's disease. Based on data analysis, it was found that legal efforts that can be taken by patients include non-litigation and litigation methods. Non-litigation efforts are dispute resolution without going through the courts, several non-litigation methods that can be taken by patients are negotiation, patients or patients' families can communicate directly with doctors or hospitals to ask for explanations and resolve disputes amicably, negotiate with the hospital, but if an agreement is not reached, mediation can be carried out, mediation is carried out by involving mediators, either from the hospital, professional organizations or independent third parties. The goal is to find a solution that is mutually agreed upon between the patient and the doctor without a long conflict, but if a bright spot has not been found, patients can file a complaint with a professional organization, patients can file a complaint with the Indonesian Medical Discipline Honorary Council (MKDKI). MKDKI is tasked with investigating alleged violations of the code of ethics and medical discipline. Complaints to the Indonesian Medical Discipline Honorary Council (MKDKI) and demand compensation. By reporting the case to the MKDKI in writing, demanding compensation against the doctor or hospital, patients who suffer losses can file a lawsuit in accordance with Article 193 of Law No. 17 of 2023 concerning health, which regulates compensation for losses experienced by patients due to misdiagnosis by doctors.

If the patient does not accept responsibility through a non-litigation process, the patient or the patient's family who suffers losses can take litigation efforts, litigation is the resolution of disputes through formal legal channels in court. These efforts include civil lawsuits, patients can file a lawsuit with the district court to claim compensation for losses suffered based on Article 1365 of the Civil Code (unlawful acts). Ethical and disciplinary processes, patients can also ask the court to order professional organizations to impose disciplinary sanctions or revoke the doctor's practice license. Misdiagnosis that occurs due to negligence or does not meet these standards can be the basis for filing a lawsuit, the losses experienced by patients misdiagnosis can cause patients to suffer losses such as; Incorrect or inappropriate treatment, worsening of health conditions due to delays in proper treatment, additional costs due to unnecessary treatment or complications, if this right is violated, the patient has the right to demand accountability.

In taking legal action, patients often face obstacles and challenges, such as lack of knowledge about the law, high costs, and long and complicated processes, so there needs to be support and assistance from various parties to help patients in taking legal action. Patients who experience a doctor's misdiagnosis have the right to take legal action to obtain compensation and justice. Legal efforts that can be taken by patients can include several types, the first is administrative legal efforts, legal efforts are the process of resolving disputes carried out in a government environment, including the following methods;

1. Complaints to the Hospital: Patients can file complaints to the hospital where the doctor works (Article 177 of Law No. 17 of 2023).
2. Complaints to the Health Office: Patients can file complaints to the local Health Office (Article 178 of Law No. 17 of 2023).
3. Complaints to the Indonesian Medical Discipline Honorary Council (MKDKI): Patients can file complaints to the MKDKI if the doctor commits an ethical violation (Article 180 of Law No. 17 of 2023).

In addition to administrative legal efforts, patients can also take civil legal efforts, civil legal efforts are efforts made by parties who are dissatisfied with the judge's decision. These legal efforts are regulated in civil procedural law, namely;

1. Civil Lawsuit: Patients can file a civil lawsuit against the doctor and/or hospital to request compensation (Article 181 of Law No. 17 of 2023).
2. Claims for Compensation: Patients can claim compensation for losses suffered due to a doctor's misdiagnosis (Article 182 of Law No. 17 of 2023).

Furthermore, patients who suffer losses due to misdiagnosis can also take criminal legal efforts, where criminal legal efforts are the right of the defendant or public prosecutor to file an appeal, cassation, or judicial review. These legal efforts are regulated in the Criminal Procedure Code (KUHAP), namely;

1. Complaint to the police, patients can file a complaint to the police if the doctor commits an act that can be considered a criminal act (Article 183 of Law No. 17 of 2023).

2. Criminal report, patients can report the doctor to the authorities if the doctor commits an act that can be considered a criminal act (Article 184 of Law No. 17 of 2023).

CONCLUSIONS AND RECOMMENDATIONS

Hospitals are health service institutions that are responsible for the safety and health of patients. In carrying out their functions, hospitals are required to ensure that health services are carried out in accordance with applicable professional standards and codes of ethics. Hospitals are legally responsible for doctors' misdiagnosis of patient illnesses, as regulated in Article 13 of Law No. 17 of 2023 concerning Health. The articles in Law Number 17 of 2023 concerning Health regulate various matters related to health, including rights and obligations, government responsibilities, and health care delivery. Hospitals are responsible for the negligence of health workers working in hospitals. Hospitals are responsible for their doctors, even though they are non-permanent doctors or visiting doctors. Hospitals are responsible for their doctors because there is a legal relationship between the hospital and the doctor and the Standard Operating Procedures (SOP) made by the hospital as a guarantee of quality for doctors and their medical actions. The hospital is responsible for the competence and authority of doctors working in the hospital, the hospital is responsible for providing compensation for losses experienced by patients due to doctors' misdiagnosis, the hospital is responsible for ensuring that hospital facilities and infrastructure meet the established quality standards. Patients have the right to take legal action for a doctor's misdiagnosis of a patient's illness, patients can take legal action to obtain compensation and justice for a doctor's misdiagnosis of a patient's illness that is proven to be detrimental to the patient, in demanding their rights patients can seek justice through non-litigation efforts, dispute resolution without going through the courts, several non-litigation methods that can be done by patients are negotiation, patients or the patient's family can communicate directly with the doctor or hospital to ask for an explanation and resolve the dispute amicably, negotiate with the hospital, but if an agreement is not reached then mediation can be carried out, mediation is carried out by involving a mediator, either from the hospital, professional organization or an independent third party. If the patient does not accept responsibility through the non-litigation process, the patient or the patient's family who suffers losses can take litigation efforts, litigation is the resolution of disputes through formal legal channels in court. This effort includes civil lawsuits, patients can file a lawsuit with the district court to claim compensation for losses suffered based on Article 1365 of the Civil Code (unlawful acts). Ethical and disciplinary processes, patients can also ask the court to order professional organizations to impose disciplinary sanctions or revoke a doctor's practice license.

ADVANCED RESEARCH

As for the suggestions given for further research, in order to improve and perfect the shortcomings and limitations of this research, the suggestion from this researcher is that changes need to be made in the health service system in hospitals, such as improving the quality of health services, ensuring that doctors

working in hospitals have adequate knowledge and experience, improving coordination between doctors and hospitals, and conducting evaluations and monitoring of the quality of health services.

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