

Legal Protection of Patient Rights in Fulfilling Health Service by Doctor in Hospital

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Abstract

Patient's Legal Protection in the Hospital may be subject to legal protection of Patient in obtaining health services, and legal protection of Patient Rights in the event of a dispute. Legal protection of Patients is Preventive and legal protection of Patient Rights is Repressive. The focus of this research is the legal protection of Patient Rights in the event of civil disputes, namely the error/negligence of hospital doctors who harm the patient. With normative juridical research methods found norms that dis harmonis in one provision of the Hospital Act. The interpretative analysis of the logic of the rule of law is used to understand the problem and find a solution. The existence of an adequate norm precludes civil law suits so that the formula should be replaced/ reformulated with other harmonious norms that are in harmony with civil rights.

Keywords: Repressive Legal Protection, Civilliability, Adequate.

A. Introduction

In Indonesia, legal construction of health service of hospital is sourced from a just and civilized humanity, and social justice for the whole of the people of Indonesia, which are stipulated in Article 28 H paragraph (1) and Article 34 (1) UUD NKRI 1945. Hospital has a duty to give service of individual's health completely. The relation with patient contains civil aspect that can be demanded if breach happens.

Aspect of public service is regulated by Law of Hospital by giving protection of patient's salvation, society, hospital environment and human resource in hospital, in Article 3 letter b. From perspective of hospital, protection of the patient's salvation, it is regulated in Article regarding Obligation of Hospital that is Article 29, which explicitly regulates only about duty of hospital as good server of health according to Law. In contrast, from the perspective Patient, protection of the patient's salvation is divided into 2 (two), that are:

- a. Protection of the patient's salvation, it is regulated in Article 32 letter a-p, and r; and,
- b. Protection of patient's right is regulated for patient that is in a dispute with hospital, in Article 32 letter q.

Protection of "patient's salvation" is a preventive protection that also become an obligation of hospital that its parameter is regulated in Article 29. Hospital must give service based on standard, and have administrative sanction in the form of warning, written warning, fine, and revocation of license, if it is not implemented.

Protection of "patient's right" is a repressive protection that is regulated in Article 32 letter q and Article 46. Patient is allowed to bring a lawsuit against hospital if hospital is guessed that hospital gives service that is not based on standard, either in civil or criminal; and hospital is legally responsible for all disadvantages that are caused by dereliction that is done by the health workers in hospital. Norm in Article 32 letter q becomes the focus of this research with the issue; that Article cannot give legal protection of patient's right to bring a civil lawsuit.

First problem, it asks whether the relation between patient and hospital has fulfilled the principle of balance or not. It is aimed to explore the basis of relation between patient and hospital based on Law, and understand the context of civil relation that become a basis of civil lawsuit. Therefore, it needs theory of distributive justice by Aristotle, theory of legal protection, and theory of civil agreement, and principle of civil balance.

Second problem, it asks whether norm of standard of hospital service has fulfilled the protection of patient's right. The aim is to dig the relation between standard of service and protection of patient's right in relation to the issue that there has not been a legal protection of civil lawsuit that has been done by patient. Consequently, it needs theory of legal protection, theory of justice, theory of responsibility, and theory of Law.

B. Research Method

Research methodology discusses theoretical concept of any models, strength and weakness that in erudition it is continued with method selection that is used. Nevertheless, research method proposes technically regarding methods that are used in his research. Method that is used in this research is normative juridical, which place Law as legal norm that can be analyzed interpretatively. The approach that is used in research of law is statute approach, case approach, historical approach, comparative approach, and conceptual approach.

This research explains and describes the civil lawsuit of informed consent against doctor in therapeutic transaction, in its discussion it is based on materials of law that have relevance, either primary law material, secondary law material or tertiary law material, explained as follow:

- a. Norm or basic regulation, which is *Pancasila*;

- b. Basic regulation, Law of Republic Indonesia of 1945;
 - c. Law, covers:
 - 1) Civil Law Procedural Code (*Burger lijke Wet boek*) Stb. 1847 Number 23;
 - 2) Urgent Law Number 1 Year 1951, which states Het Herziene Indonesisch Reglement (HIR or Indonesian regulation that is renewed; Stb.1848 No. 16, Stb. 1941 No. 44)for Java and Madura area, Rechts reglement Buitenge westen (Rbg. orregulation from the outside: Stb. 1927 No. 227)for outside Java and Madura;
 - 3) Law Number 44 Year 2009 about hospital;
 - 4) Law Number 36 Year 2014 about health workers;
 - d. Government's regulation covers:
 - 1) Government's regulation Number 26 Year 1960 concerning pronun ciation of Hippocratic oath of Indonesian Doctor;
 - 2) Government's regulation Number 10 Year 1966 concerningObligation to Save The Secret of Medicine;
 - 3) Government Regulation No. 18/1981 on Clinical Surveillance and Anatomical Surgery and Transplantation of Tool or Human Tissue;
 - 4) Government Regulation Number 32 Year 1996 regarding Health Worker;
 - 5) Government Regulation Number 72 Year 1998 regarding Security of Pharmaceutical existence and Medical Devices;
 - e. Minister's regulation covers:
 - 1) Regulation of the Minister of Health Number 920 / MENKES / PER / XII / 1986 On Private Health Service Efforts in the Medical Field;
 - 2) Regulation of the Minister of Health Number 159b / MENKES / PER / II / 1988 About hospitals;
 - 3) Regulation of the Minister of Health Number 585 / MENKES/ Per / IX / 1989 regarding Approval of Medical Act;
 - 4) Regulation of the Minister of Health Number 749a / MENKES/ Per / XII / 1989 On Medical Records;
 - 5) Regulation of the Minister of Health No. 84 / MENKES / II / Per / 1990 on Legalization of Investor Private Hospital;
 - 6) Regulation of the Minister of Health No. 378 / MENKES / PER / V / 1993 on Implementation of Social Function of Private Hospital;
 - 7) Regulation of the Minister of Health No. 363 / MENKES / PER / IV / 1993 On Testing and Calibration of Health Equipment;
 - 8) Regulation of the Minister of Health No. 1173 / MENKES / PER / X / 2004 About Dental and Oral Hospitals;
 - 9) Regulation of the Minister of Health No. 1575 / MENKES / PER / XI / 2005 On the Organization and Working Arrangement of the Department of Health, which has been Amended by Regulation of the Minister of Health no. 1295 / MENKES / PER / XII / 2007;
 - 10)Regulation of the Minister of Health Number 512 / MENKES / PER / IV / 2007 On Medical Implementation and Practice License;
 - 11)Regulation of the Minister of Health Number 290 / MENKES / PER / III / 2008 On Approval of Medical Act
 - f. Ministerial Decrees, including:
 - 1) Decree of the Minister of Health No. 595 / MENKES / SK / VII / 1993 on Health Service Standards.
 - 2) Decree of the Minister of Health Number 1333 / MENKES/ SK / XII / 1999 On Hospital Service Standards;
 - 3) Decree of the Minister of Health Number 1197 / MENKES / SK / X / 2004 About Pharmacy Service Standard in Hospital;
- Decree of the Minister of Health No. 631 / MENKES / IV / 2005 on Organizing Medical Staff and Medical Committee.

C. Result and Discussion

1. Relation Between Patient And Doctor Of Hospital According To Number 44 Year 2009 About Hospital

Based on Law of Hospital there is a relation of law between patient and doctor of hospital which is:

Relation based on therapeutic transaction with hospital according to Article 1 Paragraph (4) Law Number 44 Year 2009 is: Patient is each person that consult his problem of health to get health service that is needed, either directly or indirectly in Hospital. This relation creates legal protection of patient's salvation that the parameter has been regulated in Article 29 of Law Number 44/2009.

Then nextrelation is relation based on Informed Consent. Informed Consent or patient agreement, which is basis of law of medical actthat is done by doctor. According to Article 32 of Law Number 44 Year 2009, regarding patient's right that are:

- Getting information that covers diagnosis and procedure of medical act, aim of medical act, alternative of act, risk and complication that may happen, and prognosis of act that is done and the estimation of medical cost;
- Giving agreement or rejecting action that will be done by medical workers toward the disease that the patient has.

Then in Article 37:

- Every medical act that is done in hospital must get agreement from the patient or the family.

Regarding the standard of hospital service, there are three things that must be fulfilled in hospital service, which is: Standard Operating Procedures; Standard of Medical Service, and Standard of Nursing Care. According to the explanation of Article 13 of Law Number 44/2009, Standard Operating Procedure is an instruction equipment/steps that is standardized to finish process of routine work. Standard of Medical Service is a guidance for medical workers to give service and do action in gynecology and obstetrics. Standard of Nursing Care is a statement of quality that is expected in order to get health service.

2. Legal Protection Of Patient In Law Number 44 Year 2009 Concerning Hospital

Next discussion is about Legal Protection of patient. Law regulates parameter of protection of patient through two things:

1. First, regulation of obligation of Hospital in Article 29

Patient's salvation is protected by Law through decision of obligation of hospital. Article 29 mentions that there are 20 obligations of Hospital toward the patient's salvation, which becomes standard of health service. Main obligation of hospital is giving health service that is in line with that standard, Article 43 states as follows:

- (1) Hospital must implement standard of patient's salvation.
- (2) Standard of patient's salvation as it is mentioned in paragraph (1) is implemented through report of incident, analyzing, and deciding solving problem in order to decrease number of incident that is not expected.
- (3) Hospital reports activity as it is mentioned in paragraph (2) to the committee that is responsible for patient's salvation decided by Minister.

2. Second, through regulation of patient's right in Hospital

Patient's right in hospital is stated in Article 32. There are 19 rights of patient that have been decided by Law, and one of them is right of patient to bring a civil lawsuit, which is Article 32 letter q that mentions: Patient has a right to bring a lawsuit and/or demand Hospital if Hospital is judged to give service that is not based on good standard either in civil or criminal.

3. Analysis

Interpretative analysis of the above Article provides understanding that there is relation between patient and hospital and it is civic engagement relation that in medical theory is called as therapeutic transaction. In medical ethics code, it defines "therapeutic transaction" as a relation between doctor and patient that is done by atmosphere that trust each other (confidential), and it is always filled with any emotions, hopes and worries of living creatures. In Article 1 above doctor is represented by his institution that is hospital. This relation is an agreement that provides legal protection of patient's salvation, which parameter is in Article 29 and 32 of Law Number 44/2009.

According to civic engagement, that relation can be categorized as *inspanningverbintenis*, which is what is done by doctor is only a maximum effort to heal the patient. If a doctor has made a maximum effort based on standard of profession and code of ethics and get the license from the patient (informed consent), so that effort is enough, and that doctor cannot be judged wrong or do a dereliction of profession. There are 2 (two) theory of law that support relation between doctor and patient that are Contract Theory and Undertaking Theory.

Contract Theory is a thought that if a doctor agrees to take care a patient with a certain fee, thus contractual regulation with right and accountability can be created. If the parties agree obviously with requirement of treatment, so real contract can be made. According to Undertaking Theory, if a doctor consents to take care of patient, so it creates professional relation that is accompanied by duty of taking care of the patient.

According to King, Undertaking Theory gives basis for the creation of relation between doctor and patient in most situations that covers medical service, includes situation that is not covered by a contract. In addition, there is an incidental relation, which if service of doctor is paid by people that does not accept the service. However, because the main purpose of medical service is giving treatment, relation between doctor patient is generally found under theory of third-party beneficiary or Undertaking Theory. It is considered appropriate, beside it is paid by the acceptor of service or not.

To answer the first problem, whether the relation between patient and doctor of hospital have fulfilled principle of balance, it can use theory of distributive justice. According to Aristotle, justice is an act that is placed between giving too many and little that can be defined as giving to every people that is in accordance with their rights. Therefore, in the protection of patient's salvation, Law has decided obligation that should be

given by the service of hospital that is equal with the provision concerning patient's right in accepting service of hospital. It can be said that there has been a justice in preventive legal protection. Based on balance principle, relation between patient and hospital has fulfilled principle of balance in term of standard service of health. However, in repressive legal protection there has not been balance, because position of patient as litigant is closed with adequate norm that exist in Article 32 letter q.

Principle of balance is a continuation of principle of equality, that the strong position of creditor is balanced with its obligation to pay attention to the good intention so that the position of creditor and debtor is balanced. Imbalance that is very clear happened if one party has position of monopoly. That matter happens in the provision of Article 32 letter q of Law 44/2009 that has adequate norm that patient is allowed to bring a lawsuit if hospital is judged to give service that is not based on standard. This closes right of patient's suit, because service that is not based on standard has basically regulated the sanction in Article 29 paragraph (2) of Law Number 44/2009, in the form of administrative sanction.

To answer second problem, whether norm of service standard of hospital has fulfilled protection of patient's right, one of it uses theory of law. In theory of law, principles of arrangement of good law and regulation according to I.C. van der Vlies in his book entitled *Handboek Wetgeving*, arrangement of law should meet formal principles, one of them is principle of ability to be implemented (*het beginsel van uitvoerbaarheid*), that every arrangement of law and regulation must be based on the calculation that law and regulation made later can be implemented effectively in society.

Law of Republic of Indonesia Number 12 Year 2011 concerning Arrangement of Law and Regulation, reminding the law maker in order to pay attention principle of arrangement of good law and regulation and principle of content material. In arranging Law and Regulation it must be done based on principle of arrangement of good law and regulation that covers:

- (1) "principle of clarity of purpose", that every arrangement of law and regulation should have clear purpose that will be achieved.
- (2) "principle of institutional or officer of appropriate official", that every kind of law and regulation should be arranged by public agency or authoritative official of arranger of law and regulation. That law and regulation can be cancelled or null for law if it is arranged by public agency or non-authoritative official.
- (3) "principle of conformity between type, hierarchy, and material of content", that in Arrangement of Law and Regulation should really pay attention to the material of content which is appropriate in accordance with the type and hierarchy of Law and Regulation;
- (4) "principle can be implemented", that every Arrangement of Law and Regulation should pay attention to the effectivity of that Law and Regulation in society, either philosophically, sociologically or juridically;
- (5) "principle of efficiency and effectiveness", that every Law and Regulation is made because it is really needed and advantageous in managing life of society, nation and country;
- (6) "principle of clarity of formula", that every Law and Regulation should fulfil technical requirement of arrangement of Law and Regulation, organization, diction or term and language of law that is clear and easy to be understood so it does not cause any kinds of interpretation in its implementation;
- (7) "principle of openness", that in Arrangement of Law and Regulation starting from planning, arrangement, discussion, authentication or determining, and enactment, all are transparent and open. Therefore, all layers of society have a wide chance to give an advice in Arrangement of Law and Regulation.

Thus, it can be concluded that Article 32 letter q has not been fulfilled some of those principles, because right to bring a civil lawsuit decided by Law with the existence of adequate "if Hospital is judged to give service that is not based on standard", so that right cannot be implemented because it is hindered by the requirement of lawsuit decided by that Article 32 letter q. In another word, norm of standard of hospital service basically does not meet protection of repressive law of patient's right. Repressive protection needs an access to the civil law, not to the law of hospital related to the standard of service.

D. Conclusion

In this conclusion of the research, which relation between patient and doctor of hospital that causes right obligation is based on therapeutic transaction and produces protection of preventive law that its aim is for patient's salvation, the parameter is in Article 29 and Article 32. In protection of preventive law that relation meet principle of balance, because Law has decided obligation of hospital, includes doctor in it, which is equal to patient's right decided by that Law. Standard of health service has met the protection of preventive law, because it refers to the patient's salvation.

On the other hand, relation between patient and doctor of hospital based on informed consent produces protection of repressive law that is protection of patient's right to bring a lawsuit. In this case, there has not been sufficient protection, because there is an adequate in Article 32 letter q of Law Number 44/2009 that closes access of civil lawsuit. That matter does not meet Applicable Principle (*het beginsel van uitvoerbaarheid*), which is every arrangement of law and regulation should be based on calculation that law and regulation arranged later can be implemented.

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