The Limitation of Hospital Liability in Indonesian Health Law

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Abstract. According to Indonesian Hospital Law, as last amended by Indonesian Health Law, the hospital may be held liable for losses caused exclusively by the negligence of health workers at the hospital. In contrast, according to the concept of civil law, fault in a broad sense includes both negligence and intentional. This research examines the limitations of hospital liability in the Hospital Law as last amended by Health Law. This research is normative research with legal analysis using statutory and conceptual approach methods. This study found that hospital liability is not limited according to the theory of fault, implying that liability is based on the Indonesian Civil Code principle of an element of fault. In civil law, mistakes encompass both intentional and negligent, the legal consequences are the same the perpetrator must still pay compensation. In order for vicarious liability, which requires a person to be responsible for the actions of another person, to be applied to a hospital, the following conditions must be met: the element of the action that is against the law; the element of subordinate fault; subordination relationship and functional relationship.

Keywords: Civil liability, Hospital liability, Medical malpractice, Principle based on fault

1 Introduction

Each person is responsible for his or her acts or omissions. However, there are times when a third party bears responsibility for the actions or omissions of another person, which is called “vicarious liability” [1]. As is the responsibility of the hospital as an employer towards doctors, which is included in the provisions of Article 1367 of the Civil Code [2]. According to Article 46 of the Hospital Law, the hospital is liable for the negligent activities of health worker that cause harm to patients [3] then this article amended by Article 193 of Law Number 17 of 2023 concerning Health. Based on the formulation of these articles, several things can be interpreted, including that the hospital is responsible for losses limited to the result of the negligence of health workers in the hospital, and the hospital is not responsible for the intentional actions of health workers that cause losses [4]. By limiting it only to negligence, the hospital responsibility only covers the definition of fault in the narrow sense, namely negligence. In fact, according to the concept of civil law, fault in a broad sense include negligence and intention [5]. The element of fault (mainly in the form of negligence but also possibly

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in the form of intention) is one of the elements in malpractice, which is based on the legal field regarding unlawful acts (onrechmatige daad) [6]. An example is a case that occurred in 2022 regarding a doctor at a hospital who issued a death certificate to someone due to a non-communicable disease even though the person concerned died due to suspected abuse. There is a discrepancy between the death certificate issued by the doctor and the police report in which it was concluded that there was an alleged assault that resulted in the person death [7].

Hospital liability has been studied by many researchers. Among others, Sri Setiawati and P.A.S. Daulat found that a direct or commercial relationship between the erring doctor and the person for whom he is jointly liable is a prerequisite for understanding the basics of vicarious liability. The person who actually assigns the work, fires, compensates, and supervises the doctor in question is the subject of responsibility. The hospital or organization that owns the hospital is the party responsible in this situation [8]. Moreover, Mashari and Sarsintorini Putra found that in order to provide justice to patients or their families who suffer losses due to the negligence of health service providers and not because of the health workers themselves, lawsuits can be filed based on unlawful acts to claim compensation. This compensation can be in the form of material or immaterial compensation [9].

This research is a continuation of previous studies that have yet to examine the limitations on hospital liability in the Health Law. According to civil law, liability is a specific type of legal responsibility. The situation of a person or legal organization who is deemed to have to pay compensation or compensation when a legal event occurs is referred to as liability [10]. In the corporate liability doctrine, a hospital as a legal entity can be a party subject to legal (civil) claims. Direct accountability to hospitals is based on the fact that hospitals supervise the people who work for them [11]. Legal responsibility is transferred from individual practitioners to health care organizations (e.g., hospitals or clinics) through corporate liability [12]. On the other hand, one of the principles in civil law is that compensation must be sought for every loss. Even small mistakes can result in significant losses, especially in the medical field. So, for civil law, the main thing is loss [13].

This research was conducted based on the argument that the limitation of hospital liability in the Hospital Law, as recently amended by the Health Law to the extent of the negligence of health workers in hospitals, is different from the fault theory. The fault theory explains that responsibility or accountability is based on the principle that there is an element of fault on the part of the perpetrator in an unlawful act, as regulated in Article 1365 of the Civil Code [14]. To obtain compensation or compensation for losses suffered in civil litigation, the patient must demonstrate the following: the injury occurred, the healthcare institution was at fault—including by acting or failing to act in a manner that is inconsistent with current regulations— that there is a cause and effect relationship, that the injury actually occurred, and the extent of the injury [15]. Article 1365 of the Civil Code does not state the meaning of the fault, apart from only stating that the fault causes harm to other people [16].

Based on the above, first, this research needs to explore what liability is based on fault (Article 1365 of the Civil Code) and the limitations of liability in health law?

Second, the problem that needs to be answered is what is related to hospital liability based on Article 1367 of the Civil Code?

2 Method

This research is normative or doctrinal research, also known as dogmatic research, examining the limitations of hospital liability in the Hospital Law as recently amended by the Health Law using a statutory and conceptual regulatory approach [17]. Legal materials are classified into two firstly, primary legal materials in the form of statutory regulations, including Law Number 44 of 2009 concerning Hospitals as last amended by Law Number 17 of 2003 concerning Health and the Civil Code, and secondly, secondary legal materials in the form of expert views or doctrine obtained from legal articles from legal journals or books related to the issues raised [18].

3 Results and Discussion

3.1 Liability Based on Fault (Article 1365 of the Civil Code) and Limitations of Liability in the Health Law

Liability is associated with two parties in a dispute because one of the parties feels aggrieved due to the unlawful actions of the other party, so the party who causes the loss is obliged to bear the losses according to the lawsuit filed in court by the aggrieved party. So, compensation is a form of the perpetrator responsibility to the sufferer [19]. Fault theory essentially explains that liability is based on the principle that there is an element of fault on the part of the perpetrator in the unlawful act as regulated in Article 1365 of the Civil Code [14].

The composition of unlawful acts is always formulated based on Article 1365 of the Civil Code, which must fulfill the elements: unlawful act, fault, loss, and a causal relationship between the act and the loss [20]. Based on the definition of unlawful acts from Article 1365 of the Civil Code, 4 conditions must be met to claim damages for unlawful acts, including medical malpractice, which qualify as unlawful acts, namely:

1. Some actions qualify as unlawful acts;

Based on Arrest Hoge Raad, January 31, 1919, explains the meaning of unlawful acts in a broad sense. Suppose it is based on an unlawful act, in that case, the patient must try to prove that the loss he suffered was caused by the doctor wrongful actions, which were contrary to his professional obligations, violated the patient rights, contrary to morality, or contrary to decency in society [21].

2. There is a fault on the part of the maker;

The definition of fault includes 2 meanings, namely: fault in the narrow sense, namely negligence, and fault in the broad sense, namely negligence and intention. According to Article 1365 of the Civil Code, if an unlawful act is carried out intentionally or

through negligence, the legal consequences are the same. The perpetrator is still responsible for paying compensation [22].

Meanwhile, in relation to medical malpractice, J. Guwandi stated that malpractice in a broad sense includes: (1) Actions carried out intentionally that are prohibited by law, for example, carrying out an abortion without medical indication, carrying out euthanasia, providing a certificate medical information whose contents are incorrect. His actions were carried out consciously, and the aim of his actions was directed towards the consequences that he wanted to cause or did not care about the consequences, even though he knew or should have known that his actions were contrary to the applicable law; and (2) Negligent acts, for example neglecting patient treatment so that the patient illness becomes worse. Here, there is no motive or purpose to cause the consequences that occur. The consequences that arise are due to negligence, which actually occurs against his will [13].

3. There are consequences of loss;

It is not defined by law how much loss may be sued for or claimed as a result of unlawful act. Based on his calculations, the plaintiff can assess the value of actual or significant losses. The judge will then examine appropriateness, especially in cases of illegitimate losses. Unless the loss is due to an illegal interest, any loss coming from an unlawful act can be prosecuted [23].

4. There is a relationship between the action and the resulting loss to another person;

One of the basic aspects is the need that there be a causal relationship between an act and loss caused by an unlawful act. The patient bodily or psychological suffering in the doctor-patient relationship can only enter the area of civil malpractice if there is a causal relationship between the doctor services and the results [23].

In general, most incidents that give rise to claims of responsibility involve matters of negligence. However, someone, including a doctor, can also be responsible for actions carried out intentionally. Actions carried out intentionally in the context of the legal relationship between doctor and patient, for example, surgery without permission (assault and battery); unlawful detention of patients in hospital (false impromptu); and violation of someone privacy (invasion of privacy). Examples of intentional cases in the doctor-patient legal relationship include the ultrasound case in Singapore, as reported in the Straits Times in 1984, which involved fraud experienced by a patient who was not sick but was required to go back and forth for an ultrasound up to 29 (twenty-nine) times [24].

In Indonesia, in Decision Number 1110 K/Pid.Sus/2012, the Supreme Court found a Doctor guilty of committing a criminal act by intentionally practicing medicine without having a practice license and not fulfilling his obligations to provide media services in accordance with professional standards and standard operational procedures. In the judge consideration, it was stated that the Doctor accepted the patient for surgery even though the Doctor did not yet have status as a surgeon. Apart from that, the Doctor did not have a license to practice at the hospital where the operation was performed. During the trial, it was revealed that the medical actions carried out by the Doctor were not in

accordance with Standard Operating Procedures, including (i) a team of expert doctors did not carry out the operation but was only carried out by the Doctor himself with the assistance of 4 hospital nurses and (ii) the discovery of black suture thread left in the patient large intestine by a team of specialist doctors from another hospital during the second operation, which resulted in the patient death [25]. Based on several examples of the cases above, there was intentional action on the part of doctors, including in the case of a hospital affiliated with an Islamic boarding school issuing a death certificate for a student whom the Doctor declared at the hospital to have died of a non-communicable disease. At the same time, the local police investigated the death of the student under the assault article [26].

In accordance with general principles, responsibility arises for wrongful behavior (mistake), while a mistake is when the activity carried out by a person does not correspond to the required level of effort, either in the form of negligence or intentional [27]. In civil law, there is no liability for the consequences of unlawful acts without fault, whereas fault can include intent or negligence [28]. Meanwhile, an action that can be said to be unlawful and can be asked for compensation before the court must fulfill all the elements, namely: the existence of the action, the action is unlawful; the perpetrator must be guilty; the act causes loss; and there is a causal relationship between actions and losses [29]. Thus, the regulation of hospital liability as limited to the consequences of negligence by health workers at the hospital in Health Law is not in accordance with the fault theory.

3.2 Hospital Liability Based on Article 1367 of the Civil Code

The principle of responsibility due to the actions of another party (vicarious liability), namely responsibility imposed as a result of the actions of another party under their supervision, is one of the principles of responsibility in law apart from the principle of responsibility based on fault; the presumption principle of always being responsible and the principle of absolute responsibility [30]. In the context of health services, this vicarious liability applies to hospitals, physicians and surgeons, resident doctors, and related hospital staff [1].

Based on Article 46 of the Hospital Law, hospitals are responsible for the actions of health workers at the hospital [31]. This is in line with Article 1367 of the Civil Code. Furthermore, to apply the doctrine of vicarious liability, the following prerequisites must be fulfilled: doctors and hospitals must have an economic relationship, for example, an employer-servant or employer-employee relationship. Evidence of a direct (economic) relationship includes the following: the existence of a fixed salary, the hospital authority to exercise control and impose sanctions, and the authority to appoint and dismiss doctors [8].

The application of Article 1367 in judicial practice can be found in the Cibinong District Court Decision Number 126/PDT.G/2003/PN.CBN, where Plaintiff had a tonsillectomy performed by a Doctor (Defendant I) at the Hospital (Defendant II), which resulted in disability in the Plaintiff. The panel of judges, in their legal considerations, stated that Defendant I and Defendant II were bound by a part-time agreement so that they were still covered by the provisions of Article 1367 of the Civil Code. According

to the Panel of Judges, Defendant I action, which resulted in both profits and losses, were obtained and borne jointly by Defendant I and Defendant II proportionally. Because Defendant I has been proven to have committed an unlawful act against Plaintiff, resulting in a debt for both Defendant I and Defendant II, jointly and severally, paying compensation to Plaintiff [32].

Furthermore, Supreme Court Decision Number 1001K/Pdt/2017 found that Defendant II (Hospital) and Defendant III (legal entity that owns the Hospital) bear responsibility for the actions of Defendant I (Doctor), who did not carry out their legal obligation to provide an explanation of the risks to patients at an early stage, which is a necessity and as a result the patient died. In the case, Defendant I is a health worker for Defendant II [33].

J. Satrio stated that for the enactment of Article 1367 of the Civil Code, the following elements must be fulfilled: the element of action, namely that the action of the employee or person receiving the order must be an unlawful action; the element of subordinate fault, namely the presence of fault on the part of subordinates or people who are ordered for their actions that unlawful; subordination relationships, namely those who have a permanent relationship with the employer, either because they work under their direction or because they work according to specific orders so that they do not act independently; and functional relationships, namely there is a relationship between employee actions that unlawful and cause harm and the implementation of their duties [34].

In the two examples of court decisions above, it was found that the hospital liability based on Article 1367 of the Civil Code is focused on the subordination relationship due to the existence of a work agreement and the doctor status as a health worker at the hospital. Rosa Agustina stated that the authority of superiors in making mistakes and the possibility for unlawful acts to occur increases with the existence of duties from superiors as a condition for seeing the responsibility of superiors in unlawful acts of subordinates, as well as the existence of mistakes made by their subordinates and the presence of the relationship between the fault and the work of the subordinate for which he was hired [35].

4 Conclusion

Hospital liability is not limited according to the theory of fault, implying that liability is based on the Indonesian Civil Code principle of an element of fault. In civil law, mistakes encompass both intentional and negligent, the legal consequences are the same, the perpetrator must still pay compensation. In order for vicarious liability, which requires a person to be responsible for the actions of another person, to be applied to a hospital, the following conditions must be met: (1) the element of the action that is against the law; (2) the element of subordinate fault; (3) subordination relationship and (4) functional relationship.

There is novelty and scientific contribution in this research, especially this related to health law. In the future, it is necessary to conduct a study regarding the reconstruction of articles in the Indonesian Health Law related to hospital liability.

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