

The Role of *Hospital By Laws* in Providing Legal Protection Against Alleged Medical Malpractice at the Padang Panjang City Regional General Hospital

Yofiza Media^{1*}, Maiyestati², Prima Resi Putri³

^{1,2,3}Department of Law Universitas Bung Hatta

*maiyestati1964@gmail.com

ABSTRACT

Hospital By Laws (HBL) is an internal hospital rule designed to provide legal protection to both patients and medical personnel. In the context of Padang Panjang Hospital, HBL should function as a reference in resolving medical disputes and maintaining the quality of health services. Based on the analysis of the situation, HBL has not functioned optimally, especially in dealing with cases of alleged medical malpractice. The purpose of this study was to analyze the role of HBL in providing legal protection against alleged medical malpractice at Padang Panjang Hospital, as well as to find obstacles faced in its implementation. The method used is a sociological juridical approach with primary data obtained through interviews with related parties in the hospital, and secondary data from related legal literature. The results of the study show that many cases of alleged malpractice are resolved informally through mediation, without using strict legal procedures based on HBL. Several cases such as misalignment of surgery, incorrect installation of infusions in infants, and negligence in the installation of Nasogastric Tube (NGT) are examples of the weak implementation of HBL at Padang Panjang Hospital. The main obstacle found in the implementation of HBL is the lack of understanding and awareness from hospitals of the importance of HBL as a legal instrument. Dispute resolution is more often carried out through a family approach without involving the formal rules regulated in the HBL. This shows that there is a gap between existing regulations and practices carried out in the field. The supervision mechanism for the implementation of HBL in hospitals has also not run well, so this rule is not functioning as it should. This study suggests the need to strengthen the implementation of HBL at Padang Panjang Hospital through more intensive socialization to all medical personnel and hospital management as well as training on professional ethics and medical service standards. Supervision is needed to ensure that these rules are properly implemented in resolving medical disputes. Padang Panjang Hospital is expected to improve the quality of its services while providing better legal protection for patients.

Keywords:

Regulation; Hospital Laws; Malpractice; Legal Protection

1. Introduction

Health is a primary need for humans. Everyone wants to be healthy, so that any human activity can run according to plan. According to Article 1 Number 1 of Law No. 17 of 2023 concerning health. Health is a state of health for a person, both physically and socially, not just being free from diseases to enable them to live productively. Based on the author's observation, the HBL City Hospital did not play its proper role. Based on the analysis of the situation that occurred, it is important to conduct research on the role of HBL in providing Legal Protection for Suspected Medical Malpractice at the Padang Panjang Regional General Hospital. Conducting an analysis of HBL's constraints and efforts in providing legal protection for alleged medical malpractice at the Padang Panjang Regional General Hospital. This study aims to analyze the role of HBL in providing legal protection for alleged medical malpractice at the Padang Panjang Regional General Hospital and to find and analyze the obstacles and efforts of HBL in Providing Legal Protection for Alleged Medical Malpractice at the Padang Panjang City Regional General Hospital. The urgency of this research is theoretically scientific, this research is important because it contributes ideas to develop health laws, especially regarding the Role of *Hospital By Laws* in Providing Legal Protection Against Alleged Medical Malpractice at the Padang Panjang City Regional General Hospital through internal hearings so that if necessary it can be used to evaluate related laws. This research is for further research, both as a basic material and as a comparative material for broader research. This research is basic research and is at TKT level 3. However, this research will continue in accordance with the research roadmap that has been designed, then this research will lead to the PTUPT scheme with TKT levels 4-6.

2. Literature Review

Recently, many previous researchers have conducted research on *Hospital byLaws*. There are several previous studies that underlie the research, namely (Maulana, 2021) Implementation of hospital bylaws in improving the quality of hospital services. Hospital regulations that are drafted only to meet administrative needs can reflect the lack of service standards in the hospital. There are many cases where family-run hospitals do not pay adequate attention to supportive services, lack professionalism, and have poor hospital objectives. The existence of hospital regulations aims to realize the implementation of hospitals in accordance with expectations, on the contrary, hospitals can fail if they do not implement hospital regulations in their management.

Provisions related to medical malpractice in order to provide legal protection for victims of malpractice in Law No. 44 of 2009 concerning Hospitals, are regulated in Article 32 letter q and Article 46. The provisions of Article 32 letter q regulating the patient's rights read: "Every patient has the right to sue and/or sue the Hospital if the Hospital is suspected of providing services that are not in accordance with standards, both civil and criminal". Furthermore, the provisions of Article 46 regulate the legal liability of the Hospital, in full reads: "The Hospital is legally responsible for all losses incurred due to negligence committed by health workers at the Hospital" (Koto & Asmadi, 2021)



Legal protection can be interpreted as an effort to provide guarantees of security, tranquility, peace, welfare, from protection against those who will be protected because they are considered objects in a weak position due to unbalanced relationships or positions (Afandi & Pratimaratri, 2023a) (Hamdi & Putri, n.d.; Putra & Putri, n.d.). The legal protection provided by the government is emphasized on the elements of the State as the holder of sovereignty and power. Hospital Regulations are public policies made by the government to prevent conflicts in hospitals both from within and from outside. The government has a big role to play in maintaining, developing, and supervising hospitals.

Hospitals as health service institutions have rights and obligations that all parties involved in hospital health services need to know in order to be able to adjust to the rights and obligations in their respective professional fields. Because these rights and responsibilities are closely related to patients as service recipients, the community must also know and understand. According to Law Number 44 of 2009 concerning Hospitals Article 29 paragraph (1), it is stated that Hospitals have rights and obligations (Prayuti et al., 2024).

Each hospital is different in the content of internal regulations (HBL), so the Padang Panjang City Regional General Hospital is regulated in the Padang Panjang Mayor Regulation Number 37 of 2020 concerning Hospital Internal Regulations (*Hospital By Laws*) of the Padang Panjang City Regional General Hospital. Hospital regulations serve to prevent and balance the internal and external environment. This rule was taken with the aim of avoiding problems that arise in all aspects of the functional unit, both in the relationship between the leadership and medical personnel and with other health workers (Setiawan et al., 2019).

According to the Regulation of the Minister of Health Number: 772/Menkes/SK/VI/2002 concerning Guidelines for Internal Regulations of Hospitals, the functions of the Internal Regulations of Hospitals are:

- a. As a reference for hospital owners in supervising their hospitals
- b. As a reference for hospital directors in managing hospitals and developing policies that are technical and operational
- c. Means to ensure effectiveness, efficiency and quality.
- d. As a legal protection for all parties related to the hospital
- e. As a reference for resolving conflicts in hospitals between owners, hospital directors and medical staff.
- f. To meet the requirements of hospital accreditation.

The internal objectives and regulations of the hospital are:

- a. In general, there is a basic regulatory order that regulates hospital owners or those who represent, hospital directors and medical personnel so that hospital administration can be effective, efficient and of high quality.
- b. Specifically:

1. The hospital has guidelines in relation to the owner or representative, hospital directors and medical personnel so that the hospital administration is effective, efficient and of high quality.
2. Having guidelines in making technical policies for hospital operations.
3. Possession of guidelines in the management of medical staff.

Benefits of internal hospital regulations

- a. For hospitals
 1. The hospital is a legal reference in the form of a bylaws.
 2. The Hospital has legal certainty in the division of authority and responsibility, both external and internal, which can be a tool/means of legal protection for the Hospital against claims/lawsuits.
 3. Supporting Hospital accreditation requirements.
 4. Have tools/facilities to improve the quality of hospital services.
 5. The hospital has a clear direction and purpose in carrying out its activities.
- b. For hospital managers
 1. It has a clear reference to the limits of authority, rights, obligations and responsibilities so that it makes it easier to solve problems that arise and can maintain a harmonious and harmonious relationship.
 2. Have official guidelines for developing operational technical policies.
- c. For Government
 1. Knowing the direction and purpose of the hospital was established
 2. Reference in resolving conflicts in hospitals.
- d. For owners
 1. Know their duties and obligations
 2. Reference in resolving internal conflicts
 3. Reference in assessing the performance of hospital directors
- e. For the community
 1. Knowing the vision, mission and objectives of the hospital
 2. Know the patient's rights and obligations

If the pattern of the therapeutic relationship between the patient and the hospital, then the position of the hospital is as the party that provides achievements, while the doctor only functions as *an employee* (sub-ordinate of the hospital) who is in charge of carrying out the hospital's obligations. In other words, the position of the hospital is as a principal and the doctor as an agent. Meanwhile, the patient is in a position as the party who is obliged to provide contraperformance. This kind of relationship usually applies to government-owned hospitals whose doctors are paid on a fixed and full basis, not based on the number of patients who have been treated or the quality and quantity of medical actions performed by doctors. With this pattern of relationship (patient-hospital relationship), if there is a loss received by the patient due to the negligence of the doctor, then in this case the hospital is responsible (Triana et al., 2023).

(Afandi & Pratimarathri, 2023b) which contains in addition to an explanation of the medical procedure and the reason, also contains the patient/family's ability to pay the medical expenses. Medical procedures are carried out after financial administrative matters are completed by the patient, either partially or in full. The difference between malpractice in the medical field and medical malpractice is that there is an element of crime or misconduct in malpractice in the medical field. Meanwhile, in medical malpractice, it is more towards a failure in providing medical services to patients (Koto & Asmadi, 2021).

The Indonesian medical code of ethics was prepared using considering *the international code of medical ethics* based on Pancasila and the 1945 Constitution, the Indonesian medical code of ethics regulates the correlation between people which includes the general obligations of a doctor, the relationship between doctors and their patients, the obligations of doctors to colleagues and the obligations of doctors to themselves. Ethical violations do not always mean violations of the law, on the contrary, violations of rules are not always violations of the medical code of ethics. As long as it comes from the rule of law, error/negligence will always be related to the unlawful nature of an act committed by a person who is able to take responsibility if he can recognize the meaning that in reality comes from his actions and realize that his actions are not considered appropriate in community relations and are able to choose his intention/will in doing the act (Agustin et al., 2023).

Medical treatment of medical malpractice consists in the examination of the tools and methods used in the examination, the acquisition of incorrect medical facts, the diagnosis drawn from the acquisition of facts, therapeutic treatment, and the treatment of avoiding losses due to misdiagnosis or incorrect therapy. The decisive point of legal liability in medical treatment of medical malpractice lies in the consequences caused in the form of legal losses (Havrian, 2020). With the enactment of Law Number 29 of 2004 concerning Medical Practice, doctors who are suspected of committing malpractice are no longer examined by the MKEK (Honorary Council of Medical Ethics), but by the Honorary Council of Indonesian Medical Disciplines (MKDKI) (Salim, 2020). Hospitals that are classified as Legal Entities can be held accountable for all legal actions that they take like humans. Based on the Hospital Law, the Hospital is responsible for all losses that befall a person as a result of the negligence of health workers in the hospital. Article 46 of the Hospital Law is a juridical basis for a person to hold the hospital accountable in the event of negligence by health workers who cause losses.

Hospital liability is differentiated into accountability to patients as service users of legal entities and liability to doctors as workers in a legal entity (Hospital). According to the theory or doctrine of *intentional professional misconduct*, it is declared guilty/bad in practice if the doctor in practice violates the standards and is done deliberately. Negligence or unintentional/negligent, namely a doctor who due to his negligence (*culpa*) which results in disability or death of a patient. A doctor is negligent in doing something that should be done in accordance with medical science. *Lack of skill*, i.e. doctors perform medical procedures but are beyond their competence or lack of competence (Havrian, 2020)

3. Methods

a. Research Approach

This research is a sociological juridical legal research. by using the method of legal sociology and legal anthropology, namely an approach that examines the function and purpose of HBL in order to provide legal protection for cases of alleged medical malpractice against patients at Padang Panjang City Hospital (Putri & Maiyestati, n.d.)

b. Population and Sample

Several cases of alleged medical malpractice against patients at Padang Panjang City Hospital in the last 3 (three) years. Since there are several types of health workers, the author's sampling is limited to doctors and dentists only.

c. Data Source

The data sources used in this study are primary data and secondary data.

1. Data Primer

Primary data is basic data obtained directly in the field. In order to obtain data in accordance with the problem being researched by conducting interviews with parties related to the object of research (informants). The informants in this study are several patients, doctors and ethics and medical committees at the Padang Panjang City Hospital (Salim, 2020)

2. Data Seconds

Secondary data is data obtained from legal literature materials, data collection techniques through interviews, observations and document studies.

d. Data Analysis Techniques

After the primary data and secondary data are obtained, then the data is analyzed using a qualitative method, namely grouping the data according to the aspects to be studied. Finally, a comprehensive overview of the symptoms and facts in relation to the role and function of HBL in Padang Panjang City Hospital can be obtained.

4. Results and Discussion

Based on the results of interviews with respondents and informants at Padang Panjang Hospital, it illustrates the lack of role of the existing HBL. The settlement of medical disputes is resolved on the basis of customary law that only exists in the hospital. In answering the formulation of the maalah from this study, the researcher conducted an interview with the hospital, namely with dr. Yuhisdjarman, Sp. ENT-KL as the Chairman of the Medical Committee who stated that HBL has not played its proper role. The arrangement and substance regulated in the HBL are very complete. Next, the researcher conducted an interview with Mrs. Marlina Permata Sari, SKM., MKM as the head of the Service Division who stated that in the past year there were several cases that occurred at the hospital could be resolved through mediation only. Next, the researcher conducted an interview with the director, Mrs. dr. Lismawati R, SpPA, M. Biomed, from the results of the interview, indeed the role of HBL has not been so prominent, especially in terms of providing protection to patients. So far, dispute resolution cases have been resolved simply through mediation.

In the report, the results of the study used an analysis knife based on the theory of dispute resolution *against alleged medical malpractice*. *Based on the results of interviews with the hospital,*

there were several medical disputes that occurred or allegations of medical malpractice, as experienced by several patients.

Table 1. List of Patients in Suspected Medical Malpractice Cases at Padang Panjang Hospital

No.	Patient (initial)	Chronology of Alleged Medical Malpractice	Form of Solution
1.	RM	On the other hand, the doctor performed the surgery not in accordance with the contents of the <i>Informed Consent</i> that had been signed by the family. Finally, the family sued the RSUD	Resolved through family and mediation
2.	AN	Plebitis occurs in babies who are still a few days old. Incorrect position of the infusion installation that causes swelling in the baby's legs. Patients complain and sue health workers	It is resolved by family and mediation by retreating the patient until he recovers
3.	RN	Incorrect Installation of Nastro Gastric Tube (NGT) in patients who have had a stroke and are unconscious. NGT should have reached the stomach immediately, after being examined it turned out that it only reached the patient's mouth.	The patient was retreated and NGT was reinstalled
4.	AD	No photo X-rays were carried out, cases between doctors and accident patients. This is because there is no medical indication for an X-ray, the patient then goes to another hospital and it turns out that the X-ray said the patient's family. The patient demanded compensation for the negligence of the hospital in providing services	The case is pending until now there is no resolution
5.	AB	Patients with Low Back Pain, patients come to IDG for treatment using a BPJS card, while the patient's complaints cannot be covered by BPJS because they are not in the category of emergency diagnosis. Initially, the patient agreed to receive general treatment with prbadi funds. But after completing treatment, the patient demanded the reason that the hospital did not validate his BPJS card.	Finally, the hospital refunded the patient's medical expenses, resolving disputes through family.



5. Conclusion

HBL at Padang Panjang City Hospital has not been optimal in carrying out its function to provide legal protection to patients in cases of alleged medical malpractice. While HBL is expected to be the main guideline in medical dispute resolution, its application is often overlooked. Dispute resolution is more done through informal mediation and familial approaches, which ignore the formal legal procedures that should be regulated in the HBL. This shows that HBL has not been effectively utilized as an instrument of legal protection in the hospital.

The main obstacle in the implementation of HBL at Padang Panjang Hospital is the lack of understanding and awareness from the management and medical personnel about the important role of HBL in protecting the rights of patients. In addition, supervision of the implementation of HBL is also weak, so the rule is not applied consistently. Efforts that need to be made to overcome this obstacle are to increase socialization and training related to HBL to all medical personnel and management, as well as strengthen the supervision mechanism so that HBL is really carried out in accordance with applicable legal procedures.

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