RECONSTRUCTION OF INDONESIAN GOVERNMENT AND HOSPITAL LIABILITY IN MEDICO-LEGAL DISPUTE SETTLEMENT

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ABSTRACT

The imposition of legal liability upon hospitals and governments in health-related cases in Indonesia has created differing perspectives. Therefore, the author believes that the theory of vicarious liability can be applied to elicit liability from the hospital. However, it is found that the vicarious liability theory presents its own unique features when applied to hospitals' liability in Indonesia. The application of this theory becomes varied as it can become respondeat superior and ostensible/apparent agency. In view of the above, the present paper will be applying the Legal Theory of Interpretation of Ronald Dworkin to analyze the interpretations of legal principles by Indonesian judges in medical dispute cases and analyze the situation by applying the Theory of Governmental Damages Liability put forward by Lawrence Rosenthal and compare the result with the rules of unlawful government acts as applied in Indonesia. This research is expected to provide a theoretical and philosophical description of the liability of the government and hospitals in medical disputes in Indonesia, as compared with their relevance to the postulated legal principles and theories.

Keywords: Hospital Liability, Vicarious Liability, Ostensible/Apparent Agency, Respondeat Superior, The Legal Theory of Interpretation, Theory of Governmental Damages Liability.

INTRODUCTION

National goal of Indonesia as stated in the opening of the Constitution 1945 is to protect all the nation of Indonesia and all the blood in Indonesia and to promote the general welfare, educate the life of the nation, and to conduct the world order based on independence, eternal peace, and social justice (Law, 1945). To achieve that goal is held a national development program thoroughly and continuously. Health development is part of a national development that is implemented to incre**a**se the degree of public health through health efforts and community empowerment that is supported by the protection of financial and equitable health services (Law, 2016).

In order to realize the distribution of health services, the Government made efforts by increasing the availability of adequate health services, one of which is a hospital. The role of the hospital is very meaningful in providing health services to the community. In practice, some of these responsibilities cannot be optimally implemented.

It is apparent that the legal responsibility imposed on the hospital is also very large. Often, the responsibilities that have been entrusted in this law and ethics cannot be fully performed because of the strong pattern of the paternalistic relationship between the giver and recipient of health care. According to the Dictionary from the (Center, 2008), it is stated that the responsibility is the state of being obliged to bear things (in case of anything can be prosecuted, indicted, disputed, and so on). According to (Black, 1986), Liability has three meanings, among others: an obligation one is bound in Law or justice to perform; condition of being responsible for a possible or actual loss; and, condition which creates a duty to perform an act immediately or in the future.

Salim (2007) found that the responsibility of the law is terminologically derived from two words, namely responsibility and law. The word responsibility comes from the translation of the word Verantwooedelijkheid, while the word law is a translation of the word recht in Dutch or law in English. Verantwooedelijkheid is obliged to assume responsibility and assume the losses suffered (if required) either in law or in the field of administration. According to (Notoatmojo, 2010) legal responsibility is the human consciousness of intentional or accidental conduct or action. Responsibility also means to do as an embodiment of consciousness and obligation. Legal responsibility is also a result of the consequence of a person's freedom about his or her actions relating to ethics or morality in the conduct of a deed. The legal responsibility (Purbacaraka, 2010) is sourced or born for the use of facilities in the application of persons ' ability to exercise the right and/or carry out its obligations. Further affirmed that any performance of obligations and any use of right, whether or not adequate or adequately undertaken, shall essentially remain to be accompanied by accountability, as well as the exercise of power. In essence, the hospital is responsible for three things: The Responsibilities related to duty of care (obligation to provide good service), responsibilities to tools and equipment and responsibility to personnel.

Duty of care can be interpreted as obligation to provide good and reasonable service. The implementation of the obligation to provide good service related to various things, among others, in relation to its personality, because the hospital as an organization can only act through the manpower he hired. The provision of health services in the hospital is done by both health and non-health workers. Services provided by hospital personnel, especially healthcare personnel, must conform to the standard size of the profession. Hospitals should be responsible if there is a provision of health services under the standard performed by the personality so as to cause unwanted consequences for the patient. Regulations related to this obligation, including the (Law, 2017), which defines the safety of patients as a system that makes the upkeep feel safer, including risks, identification and management of patient risks, reporting and analysis of incidents, the ability to learn from incidents and follow-up, and implementation of solutions risk and prevent injury caused by an error from carrying out an action or not taking action that should be taken.

Hospitals should ensure that the facility is functioning properly and continuously. Broadly, the facilities in the hospital can be divided into non-medical facilities and medical facilities. Non-medical facilities such as the provision of well-equipped rooms with beds, mattresses, lighting, water, electricity, and other facilities. The nature and function of non-medical facilities is very important because the malfunction of non-medical means resulted in the function of service in the hospital. As for medical means, all medical supplies and equipment are required in the hospital.

Considering the hospital is a solid institution of facilities and equipment as well as a

concentration of medical equipment ranging from simple to high-tech. The range and amount of its distribution depends on the type of hospital, except for the minimum basic equipment that should be available in every hospital such as equipment and supplies in the emergency unit room.

The hospital's legal responsibility for its personality implies that the hospital should be responsible for the quality of the personnel working in the hospital. The legal relationship between hospitals and doctors can be divided into two types, namely Labour relations, in this connection; the doctor works as an employee of the hospital and receives a salary from the hospital (Doctor in). In this case, the doctor acts for and on behalf of the hospital. Thus, the hospital is fully responsible for all actions of the doctor. This relationship is found in all government hospitals and a small portion of the private hospital and Agreement-based relationships, in this connection, the Doctor has the right to use the facilities in the hospital and the hospital provides facilities for the Doctor (doctor out). In this case, the Doctor works independently and serves as a hospital partner. Therefore, the responsibility is not at the hospital, but on the doctor itself. This relationship often occurs in private hospitals (Willa, 2001).

METHOD

This argumentative research uses mixed approach which utilizes doctrinal or traditional legal research method with comparative approach. Conventional legal sources including public statute, act and case law (jurisprudence) serve as the main legal basis how the medico-legal case responsibilities are set toward the government and hospital management. Furthermore, philosophical legal theory and health law doctrine play a role as a tool of analysis and argument basis.

RESULT

With regard to the hospital's and government accountability pattern. Analysis of the current applicability and conformity is the main focal point of this research. The next problem that will be analyzed is on the limits of the parties responsible if there is a medical dispute in the hospital. Provisions contained in article 46 of the hospital law governing the legal responsibility of the hospital, it is unclear its scope so that so far in its implementation only reach health workers (especially medical personnel) who perform actions and managers of hospitals. These conditions do not reach the hospital owner. Legal responsibility of the hospital owner has not been touched in the implementation regulation as well as Theory of hospital responsibilities in Indonesia.

Law Number 44 (Law, 2009) also regulated by government and local government responsibilities. Among them are found in article 6 of the Law number 44 year 2009, which essentially states that the government and local governments are responsible for: building and supervising hospital maintenance hospitals; Provide protection to hospitals in order to provide healthcare services professionally and responsibly; Provide protection to the people of hospital service users in accordance with the provisions of legislation. However, in practice, if a medical dispute arises in a hospital, the responsibilities of the government and the local government are never touched in the legal process.

DISCUSSION

Theatrical Concept

Theory is a series of related propositions or descriptions arranged in a deduction system that suggests explanations or symptoms. Meanwhile, at one research, the theory has a function as a referral to researchers in conducting research. To examine a legal problem more deeply required theories that form a series of assumptions, concepts, definitions, and propositions to explain a social phenomenon systematically by formulating relationships between concepts (Ashofa, 2004). Attamimi (1992) stated that the theory is a set of understandings, points of opposition and interrelated principles that allow us to better understand the attitude toward something we are trying to experience.

The position of theory in the world of science occupies an important position. It is because the theory is able to provide means for people who use reason and mind to be able to summarize and understand the problems faced and discussed better. Theory can unite and show things that are originally scattered and standalone into things that are intertwined with each other and have a certain meaning. Theory can also provide an explanation by organizing and systematizing a problem. Although the theory may also contain subjectivity, let alone dealing with a fairly complex phenomenon such as this law, but the subjectivity is not an absolute subjectivity, as it will be able to change according to the latest developments found even developments that can occur caused by the fact of the theory that subjectivity itself (Ian, 2013)

Theory of Legal Interpretation (Ronald Dworkin)

The most influential view of Dworkin is the law of interpretation. In this theory, the law is interpreted as integrity, where the judge interprets the law consistently/coherently on the principles of Community political morality, particularly concerning the value of justice, fairness, and legality. The legal issue for Dworkin is not only limited to events where the judge decides a matter based on legislation. Dworkin assumes that legal reasoning is interpretive.

However, the problem is that Dworkin does not explain deeply and comprehensively about what it is meant to be with "*interpretation."* Dworkin only states that interpretation is an undertaking in which "*the parties extend discipline into the future by examining its past,"* and that characterization of this interpretation is widespread enough to incorporate many "*literary criticism, history, philosophy, and many other activities"* (Moore, 1987). Dworkin uses the theory of legal reasoning to find the underlying principles or embedded in the verdict (the court product) of the past. In contrast, Dworkin talks about the theory in the context of legislation or constitutionally in terms of finding conception (theory) concepts that can be found in relevant or equivalent text with the concrete intent of the legislator Constitution. It is more abstract in nature (Moore, 1987).

According to Dworkin, the principles of morality cannot be ignored in legal decision making. Enactment of these principles is adjusted to its weight or depends on the case encountered. Moral principles have a legal (legal standing) position. The judges in resolving the problems in the courts are not only based on the rules, but also in the principles. Judicial practices modify legal rights and obligations, because those practices are affected or influenced by certain principles. The law is not merely a system of rules. The law also contains standards

that are not rules, namely principles and wisdom. With regard to interpretation in law, many legal expert and scientists categorize Dworkin as a conventionalist. The reason is that Dworkin is persistent and fully committed in stating that the judge is obliged to consider moral values in interpreting legal and constitutional texts. Dworkin is a figure of true conventionalism (Moore, 1987).

It is stated that the interpretation theory developed by Dworkin is often used by judges. Dworkin argues that a subjective judge's conception and the value of justice are important to their decisions, even when the judges want to remain true to the absolute. Judge must understand the moral and underlying principles of the law and then apply the moral and this principle is as faithful as the law itself. According to Dworkin, no judge is allowed to rule out moralistic interpretations for "*strict constructionism*". Dworkin confirms that the moral philosophy of judges is decisive and important for their jurisprudence.

In the book "*Justice in Robes"*, Dworkin asked several important Questions: *"How should the moral belief of a judge on his judgment of the law?"* Dworkin argues that morality and law cannot be released. The interpretation of the law is to a high level of things that are normative because the law leaves a gap in which judges should rely on their intuitive understanding of justice. Even for those judges who do not explicitly embrace the moralistic interpretation of the law, articulate acts of legal interpretation require the explanation and justification of legal practice in the past, and this process illustrates what is considered important by the judges. According to Dworkin, the strict constructionism-the idea that a judge can rule out his morality and merely follow the legal text -is a mistake and there is no hope of realizing justice from a method like this.

In his book Law's Empire, Dworkin explained that every time the judge faced a legal issue, he had to construct a theory of what the law was. This theory of construction should not only be coherent with established laws and past court decisions, but also with the principles of political morality a Legal interpretation implies that in practice, the law is sometimes interpreted as an interpretive discipline. Law Enforcement performs interpretations and uses reason to construct arguments by guiding the authoritative texts of the law as well as the Constitution (written). Behind the authoritative texts, there are normative theories that can be used to dig deeper into the meaning contained in the texts (Moore, 1987).

Moore (1987) state that Dworkin connects the law with political morality. The implications, adjudication or litigation are no longer a mechanical routine to apply the general rules to the particularity cases. The practice of law always involves interpretation to refer to the principles or values of political morality. In this case, the court proceedings in Dworkin's adjudication theory always involve a political interpretation. According to Dworkin, there is a coherent relationship between legal principles and rule of law as well as in the relationship between legal and moral concepts. Dworkin and positivity differ in rhetoric and in their basic approach to jurisprudence. There are several differences left in their adjudication theories; One important distinction is whether the judge has a legal obligation to use the moral principles embedded in the existing law (Burton, 1987).

Burton (1987) with legal theory as an interpretation gives some donations. Firstly, Dworkin was able to give a more consistent explanation to the proceedings, especially in difficult cases, where the judge did not need to refer to the non-legal standards of decision making. Secondly, this theory is also able to provide an explanation of internal compliance issues of legal practitioners, especially judges. In every decision-making in the proceeding, judges are

bound by the principles derived from the community's political morality and are the duty of the judges to export those principles in every decision Made.

Third, the biggest contribution to the concept of law as an interpretation is that it is able to give a better explanation of the relationship between law, morality, and politics; Also the relationship between the principles of law with the political beliefs of the judges. Theory of Legal Interpretation to analyze the vicarious doctrine of Liability: The doctrine of Superior Respondent vs. ostensible doctrine or Apparent Agency and Authority theory related to government responsibilities in the field of health.

The Vicarious doctrine of Liability: The doctrine of Superior Respondeat vs Ostensible doctrine or Apparent Agency

Ameln, 1991 state that the hospital's legal liability against personnel can be analyzed using the vicarious liability doctrine and the Central Responsibility doctrine.

The hospital responsibilities of the personnel are based on the doctrine of employer-employee relations (vicarious liability or respondent superior or master-servant relationship, let the master Answer) in the legal library. The rationale of this doctrine is motivated by the difficulty or even will not be a patient who is injured by the employee or doctor alone (Ameln, 1991).

According to this doctrine, the hospital is responsible for its employees. The problem is that not all doctors who work in hospitals are status as employees of hospitals. For non-medical and paramedic personnel in hospitals, almost all are in the status of hospital employees.

For medical personnel, the application of the Vicarious Liability doctrine is somewhat complicated because doctors who work in hospitals are variegated, consisting of: Doctor in or Permanent Physician. Doctor in is an employee of the hospital. Doctor in is also called as full-time doctor or full timer doctor. As hospital employees then the relationship between doctor in and hospital is bound by labor law. There is a working relationship between employers and employment recipients. Doctor in obtained a permanent salary from the hospital and obtained benefits, such as retirement. Based on the vicarious Liability doctrine, the hospital is responsible for any medical action performed by a "*physician in*" because the Doctor is the status of the hospital employee **"***Doctor Out" or "Doctor Does Not Remain"***.**

Doctor Out its status is not as hospital employee. The relationship between Doctor Out and the hospital is not bound by labor law. Doctor Out does not acquire a fixed salary and does not acquire any benefit from the hospital. The Doctor Out of these includes Doctor Part Timer Doctor, also known as a part-time physician. This doctor only comes to the hospital for practice at a certain time only. The relationship between the Doctor Part Timer and the hospital applied the share system. Visiting Doctor or guest physician, this doctor is working together with various hospitals, has the right to take care of the patient in the hospital and handle his own patients. The guest doctor did not open the practice in the hospital. A doctor who works a full timer at a hospital, but not a hospital employee (Ameln, 1991).

Central Responsibility Doctrine

Central Responsibility doctrine is motivated by the thought that the fact that the patient comes to the hospital only relates to the hospital. Starting when the administration of admission,

medical and maintenance measures, until completing or settling the payment, the patient is associated with the hospital without the know the status of the Doctor who took care of him.

With this doctrine, the patient can sue the hospital without having to pay attention to the status of the Doctor who handles it because central to the responsibility of the hospital (Ameln, 1991). So that the hospital is the first to be asked responsibility for the loss of the patient caused by the negligence of its personality, especially the physician, during carrying out duties within the scope of the physician's authority.

However, based on the results of the research on several journals, there is a different understanding related to the Vicarious Liability doctrine that Fred Ameln and Guwandi had expressed. In some journals unknown Central Responsibility doctrine in the field of health. (Havighurst, 2000) believe that the hospital is responsible for the doctor's malpractice and negligence by other health workers while carrying out the work in the hospital. At present, the hospital is expected to be more responsive in resolving its medical accountability for malpractice. The doctor remains subject to the obligation to carry out his or her workload professionally, while the hospital is obliged to monitor the doctor's performance to detect and prevent the emerging practices of medical practice under the standard. If the hospital loses a lawsuit, the hospital is responsible for financial compensation.

The vicarious liability in Black's Law Dictionary in 1968 is interpreted as:

> *"Imposition of liability on one person for the actionable conduct of another based solely on a relationship between two persons, for example, the liability of an employer for the acts of an employee, or a principal for torts and contracts of agents (Black, 1986)."*

In various journals, the Vicarious Liability doctrine consists of the doctrine of Superior Respondeat and the doctrine of the Ostensible or Apparent Agency.

Doctrine of Superior Respondent

Based on the Doctrine of Superior respondent, the employer is responsible for the lawsuit against its employees when the employee commits a mistake at the time of the employment (errors occurring within the scope of the work). Recognized by the rights of employers or employers to control their employees. The court identifies the relationship between employers and employees through several things: the presence of employer's right to control its employees, the payment system applied, what skills are needed in the work, whether the employer provides work equipment, auxiliaries to perform the work and workplace, and the trust of the parties in the relationship to realize the relationship between the employer and subordinate. Basically, the doctrine of Superior Respondeat does not make the hospital responsible for the negligence of the trained physician (having adequate competence) in the hospital independent contractor (Independent contractor). In this case doctors apply their own professional judgment, skills, and expertise in treating the patient and the hospital has no adequate control over the way and details of their work (MacDougall, 1998).

However, in its development, (Havighurst, 1997) judge that the Court finally applied, the doctrine of the Superior respondent to the employee or hospital nurse who caused the patient's injury through professional negligence. Similarly, a paid physician (such as an apprentice worker and other hospital staff, employed by a hospital under Law or agreement), is currently treated as a regular employee for the purpose of imposing a representative's execution of the

responsibilities. The Court thus finally accepted the argument that, although the hospital could not direct the professional work of the doctor, but the hospital still assumed the legal responsibility for the job because the doctor was hired by the hospital. The hospital can fire the dokers working at the hospital and ensure that the doctor has worked in accordance with his competence. Hospitals can be held accountable for claims caused by their professional employees.

The doctrine of the Superior Respondeat is contained in (Subekti, 1992) which reads: Employers and those who raise others to represent their affairs, are responsible about the losses issued by their servants or subordinates in the conduct of the work for which these people he wore. According to this doctrine, the hospital is responsible for its employees. The doctrine of Superior Respondeat can be applied in 2 (two) things:

1. For doctors who clearly have a relationship with the hospital (there is a job relationship or relationship between employers and subordinates). In this case superior respondeat theory can automatically be applied.
2. For doctors who do not have a working relationship with the hospital. In this case it should be proved that the hospital has a control function of his doctor. The stronger the control function owned by the hospital can be proved then the greater the opportunity to apply superior respondeat theory (Buckhalter, 1999).

The Doctrine of the Ostensible or Apparent Agency

When the health services are processed into a business entity, healthcare consumers will have the impression that the healthcare service is provided by employees of a business entity and not by a physician as an independent contractor. The doctrine of ostensible or Apparent Agency comes from the trust of the receiving healthcare service that there is an employer-employee relationship among the people who employ the Independent contractor and the person who provides the health care. Ostensible doctrine or Apparent Agency appears in terms of: someone employs an independent contractor to perform health services for others. The healthcare recipient believes that the healthcare service is provided by the employer or its ailiers (the recipient sees or obtains the viewpoint of the relationship between the employer and the subordinate); Employers are responsible for physical damage caused by the negligence of the independent contractor when carrying out its duties (MacDougall, 1998).

If the employment relationship between doctors and hospitals is difficult to prove, it can be applied to the ostensible doctrine or Apparent Agency. Hospitals are responsible for doctors who are not tied to a working relationship if: The hospital creates the condition that the Doctor Who provides health care in the hospital is a representation of the hospital so that the impression that appears is a hospital not only provide facilities for health care but also provide health services through his doctor; Because of this condition, then the patient then entrust the recovery of health conditions to the hospital (Buckhalter, 1999).

In the development of the court then implements the ostensible doctrine or Apparent Agency to require the hospital to be responsible for the doctor's negligence, even though they are the independent contractor. Based on this principle, many hospitals are then responsible for the negligence of professionals in the emergency room, mistakes by radiologists, anesthesiologists, and pathologists who carry out actions in hospitals. (Havighurst, 1997).

According to (MacDougall, 1998), The doctrine of Ostensible or Apparent Agency then gave birth to the corporate doctrine or Direct Liability, where Hospital is responsible for the responsibility of the negligence of a corporation (Corporate Negligence) that is, responsible for

its own negligence as an institution and not only as a representation of the guilty act of its employees. This is preceded by the Darling v. Charleston case Community Memorial Hospital. Historically, the hospital was spared from legal responsibility for the government's cruckly and categorized charitable institutions (Charitable Immunity). However, such a view was rejected through the Darling v. Charleston Community Memorial Hospital case ruling.

In the United States, the Darling vs. Charleston Community Memorial Hospital in 1965 became a preliminary milestone for this doctrine. In this case, there is a doctor of UGD (not a hospital employee) has made the neglect so that the patient should be amputated by his foot. He was a blame for not referring to another hospital. In this case, the risk is a hospital as an institution because it has used a doctor whose ability is below average. The court argued that the hospital was obliged to examine first and select the acceptance of the new physicians. In addition, there is Johnson case vs. Misericord Community Hospital in 1981, where the patient demands a doctor because it has injured the femoral and nervous arteries when attempting to perform an orthopedic procedure. The court argued that the hospital failed to check the doctor's background and did not perform its obligations well on the selection of his medical staff (Guwandi, 1991).

In the UK, hospital's legal responsibilities begin with the application of the Vicarious Liability doctrine that is only applied to the permanent physician in the hospital, not against the guest physician (the Collins case vs Hertsfordshire Country Council). Then, the hospital began to expand its responsibilities to the unfixed physician stating that although the guest consultant or other contractor is essentially personally responsible for the negligence that resulted in the patient's injury, but the patient is still able to sue the hospital when the contractor is a hospital person. This is because the hospital has a duty of care responsibility to the patient. Then, the hospital's responsibilities became increasingly widespread, which included the entire hospital staff, including the part- time or working for a while (the Roe vs. Minister of Health case). The more the hospital responsibilities include guest consultants. This is true since the verdict in the case of Hoggins vs North Board and Bash 1954 (Guwandi, 1991).

Hughes-Harling, (2003) state that the Vicarious Liability doctrine allows the imposition of responsibility in persons or an entity (e.g. hospitals) for the behavior of others. This doctrine allows the hospital to be responsible for the negligence of the employee or the person representing it from the hospital. Based on agency principles, the concept of a representative accountability occurs when employees make mistakes in the scope of work, and employers are responsible even if it may not make any mistake.

The responsibilities of hospitals in Indonesia are governed by Law Number 44 (Law, 2009) stating that the hospital is legally responsible for all damages incurred by the negligence made by the health workers in the hospital. However, until now there have been no implementing regulations explaining the implementation of the hospital responsibilities as stipulated in article 46 of the Hospital Law. Consequently, in practice in court, the doctrine of Superior Respondent and the ostensible doctrine or Apparent Agency is often used in two conflicting extreme points. The doctrine of Respondent Superior is used by lawyers to defend the hospital in case of a doctor who is not a hospital employee. While the doctrine of Ostensible or Apparent Agency is used by the patient lawyers to fight for its clients' interests.

Authority Theory Related to Government Responsibilities in the Field of Health

According to Atmosudirdjo, (1994), Administration of the State (Bureaucracy) is the overall efforts and activities of the administration in the State Administrative office or the implementation of state governments with the roads and routine means and certain procedures (which are generally rigid or inflexible), which among others consist of state correspondence, archives, registration procedures (registratiewezen), documentation, expedition, inventory, loading and Storage of statistical decision letters, legalization, and so on. In the implementation of the State administration, there is an element of authority and authority.

It is worth the differentiate between authority (Authority, Gezag) and authority (competence, Bevoegdheid), although the practice of differentiment is not always necessary. "*Authority*" is the so-called "*formal power",* the power derived from legislative power (given by the Act) or of administrative executive power. Authority (which is usually made up of some authority is dominion over a particular person or authority over a particular field of government (or field of affairs), while the authority is only about something specific parts only. "*Authority*" in the field of judicial or power prosecutes should we call competence or jurisdiction only. In the authority terd of the Authority (rechts-Bevoegdheden). Authority is the power to do something of public action, such as the authority to sign/Publish Inn letters from an official on behalf of the Minister, while the authority remains in the hands of the Minister (Delegation of authority). The right "is the power to commit a private law or personal law (civil law) (Atmosudirdjo, 1994).

CONCLUSION

Hospitals are complex business units. This is because it has many staffs with various qualifications and is the place of various professions to apply the science. The hospital is also a complex organization because it serves a very large number of patients. With regard to the legal responsibilities of this House of sack, the development of the concern of the hospital's legal answers in the United States is currently indicating the presence of change patterns leads to the company's accountability. The focus of hospital law liability in the event of a lawsuit is on its organization and not on its individual. This pattern of accountability is similar to the pattern of accountability adopted in the company. Hospitals as business entities must be solely responsible for organizations and not solely putting responsibility on individuals. This is because the immunity given by the Government to the hospital is increasingly reduced, where the hospital was previously considered as a charity then in its development turned into a business entity. Hospital should monitor and ensure the quality of staff working in hospitals. (Leflar, 1998)

In ideal conditions, the interests of patients, doctors, and hospitals should be in parallel positions and in harmonious relationships. In fact, the interests of these parties are often different and not harmonious. Consequently, conflicts arise between the patient's rights and expectations, the doctor's rights and obligations, and the hospital's legal responsibilities.

The hospital as a corporation or company also has a fiducia obligation to the patient. The theory of medical malpractice states that hospitals should be able to ensure the safety and comfort of patients (patient safety) and are obliged to pay compensation in the event of undesired (e.g. medical errors) that cause the patient to injury or suffer losses (Leflar, 1998).

The hospital's obligations relating to patient safety include the following 4 things: First The obligation to use reasonable care in the maintenance of facilities and equipment are safe and

adequate, the obligation to choose and employ a competent physician, the obligation to monitor the responsibilities and performance of the duties of other healthcare personnel, including related to the distribution pattern and circulation of medicines in the hospital; and the obligation to formulate, adopt and enforce adequate rules and policies to ensure quality care for patients (Leflar, 1998).

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