

# THE HOSPITAL BY LAWS ESTABLISHMENT IN ORDER OF LAW CERTAINTY FOR GOOD HEALTH SERVICE IN INDONESIA

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## ABSTRACT

*The Health Service at the hospital plays the part of human rights that based on social rights, either the right to self-determination. Thus - relevant to rights and the obligations. Therefore, the hospital may establish their managerial hospital service throughout the Hospital by Laws. The Hospital by Laws plays as law instrument on health service in order to recent resource that resulting effectively and efficiency. The other word, the hospital bylaws roles as preventing and solving internal dispute and external dispute, furthermore to certify the certainty between internal hospital stakeholders such as doctor and medical employee including an appropriate health service for patient. The hospital existence on appropriate health service in Indonesia capable to preserve safety and qualified if internal hospital stakeholders such as employer, management and medical employee are working properly effectively, efficiency and accordance to lawful. Whereas hospital laws essential such as managing job descriptions, obligation and publicity competence, consistent and the proportional among those three components. The hospital bylaws assigned as basic framework for hospital service implementation and also to eliminate any conflict interests ever happened. By Juridical normative approaching research method, namely by researching throughout lawful norms, revealed research results that hospital bylaws establishment to achieve law certainty on appropriate health service as fulfilling with rational norms, visible, consistence, concrete legal, and optimizing values at reasonably limits which established for further laws on public health. Furthermore, hospital bylaws capable to be implemented as measurement point on the existence whether there is a failure or illegitimacy on health service. Furthermore, that hospital bylaws consist of two parts, namely corporate bylaws and medical staff bylaws.*

**Keywords:** Hospital, Health Service, Hospital Bylaws

## INTRODUCTION

The establishment Hospital Bylaws study indeed to support law certainty on hospital bylaws in Indonesia. It is very important to be implemented, nevertheless, in order to improve law certainty of good health service in Indonesia, it is necessary to be implemented, because it has been stated on DE strategy For Health For All by The Year 2000 through WHO and UNICEF in 1978, which based on Atlantic Charter in 1942, stated that health such as welfare that has to be improved, within, Indonesian country as a member of UNO as well. Furthermore, cannot be avoided the agreement.

Based on Article 25 UNO Charter in 1945 that relates also to Article 22 and 29 of Declaration of Human Rights in 1948, there is also contains a norm that states the right to health care and social welfare as basic norm of state on holding the general welfare in a democratic society. Throughout this law source that implemented on Helsinki Declaration in 1964 and Lisbon Declaration in 1981 that agreed on health service that should indicated

with welfare throughout law instruments such as rules that capable to accommodate principles that stated on UNO conference.<sup>1</sup>

Furthermore, on World Medical Association in Geneva year 1948, that health functionaries also has committed of developing and sharing the knowledge for humanity which based on laws, thence on Sydney Congress in 1968 established a principle that I will not use my medical knowledge contrary to the law and humanity.” Particularly, for the countries those practice codification and common law, doctor laws have similar object, namely “patient”. The laws that protect this patient such as the only target on international doctor laws that valid to all over the world which point out at norm of the enjoyment of the highest attainable standard of health is one of the fundamental right of every human being.” If to be elaborated based to law and justice including other rules thence commonly health service at the hospital as related between rights and obligations on health laws, that point out from two basic human rights namely the rights to health care and the right to self-determination such as individual right.<sup>2</sup>

Next on, from observing to law practice from time in Indonesia, then revealed brightly that intervention habitual on normative order. The people who read the rules then speakers that has to act like this and like that, however, indeed merely it is not similar or different such as comprehended by people. This is what be called as habitual intervention. Based to that empiric data, the must be built such a theory concept that a law merely is not a business of rule, however, as a matter of behavior.

Furthermore, on health sector and the Indonesian large topography building, also there are added several bad health service cases followed by disputes that proposed by patients to the hospital<sup>3</sup>. These cases assigned to one indication that there is still a hospital without having a systematic, clear and detailed, therefore, in accordance with hospital tailor made principle. Indeed, has to possess internal hospital bylaws that related to situation and condition.<sup>4</sup>

Therefore, the importance of rules very perceived due to support health acts in order to be more excellent and more appropriate. If be viewed from rules aspect by developed national health system at present time. Thence it is the right time to rebuild again and to complete hospital rules that suitably over the time.<sup>5</sup>

By all means, also required the capability of professional human resource cause the hospital as a organization that established to achieve optimum health service for society. These parts required continual renovations and developing. Every hospital has to replant the managerial in order to available resource capable to usable effectively and efficient, as the other alternative to fix it is an effort such establishing hospital bylaws

## LITERATURE REVIEW

The health law as be known exactly that relates to medical staff profession, according to Daldiyono that be called profession as one part or job type that requires specific education, it is not all kind of jobs can be called as a profession. A profession contains specific type, namely: 1. There is a specific knowledge and firm that learned, for example doctor profession who does medical sciences 2. There is a history and capable to be known the pioneers 3. There is an independently profession association and has rights to regulate the members 4. Primary task to serve by concerning who be served (altruism) that regulated on code ethics.<sup>6</sup>

Furthermore, there are protection and regulation about health on Indonesian law system, namely Law No. 36 Year 2009 about Health, Law No. 44 Year 2009<sup>7</sup> about Hospital, Law No. 29 Year 2004 about doctor practice,<sup>8</sup> Law No. 4 Year 2019 about midwifery and Law No. 36 Year 2014 about Medical Human Resource.<sup>9</sup> The entire of laws such directly or indirectly have a strong relation to the hospital, as hospital definition is a health service institution for society with specific characteristic that influenced by health science and knowledge development, technology progress and socio-economic society life that has to be

capable to increase health service quality and in turn, the society also capable to substitute the health service in order to achieve optimum health level.<sup>10</sup>

Thus, the hospital as health service institution that holds individual health service perfectly which provides service for inpatient, out patient and rehabilitative.<sup>11</sup> Besides, that the hospital also as one kind of a complex health service institution and currently such a vital component on health service system, especially by the opening global market era such as Asian free Trade Area (AFTA) in 2003 and Asia-Pacific-Economic Cooperation (APEC) in 2020. The hospital will enter tigh competition by multiple challenges and problems that obstructing forward.

Nevertheless, also at once as a huge opportunity that the hospital required to provide a service that corresponding to profession standard, qualified, efficient and effectively and at once capable to provide society needs and the owner of the hospital.<sup>12</sup> Furthermore, Azrul Azwar states about a definition of the hospital from base formation as an institution that be given rights and obligations on health service by limitation comprehending are as follows: 1. The hospital as an institution that throughout professional medical employee that organized permanently including doctor facility on holding doctor service, continuous nursing care, diagnose and duration of illness that suffered by the patient (American Hospital Association) 2. The hospital as a place where the illness people searching and receiving doctor service as well as a place where clinic educating for medical student, nurse and a variety of health profession that being held by Wolper and Pena 3. The hospital as a centrum of a community health service, education as well as doctor research being held by the Association of Hospital Care.<sup>13</sup>

According to Maeijer that a hospital is meant as Het Zekenhuis is an undertaking with its own character: it focuses on medical research and medical treatment of hospitalized patients. The hospital is not an enterprise in the sense of a business that is aimed at making a profit or any legal advantage."<sup>14</sup> The important hospital task as fostering conductively managerial climate for the entire man a hospital, each part of hospital environment namely an owner, leader/director/staff and employee that has to understands, to practice to comprehend a right and an obligation as well as authority each of them for patient protection needs particularly and commonly for public. By preventing undesired excess, limiting on official/staff line of duty period that has to be concerned.<sup>15</sup>

Hereinafter, Hospital Bylaws capable to be translated such as corporate bylaws and medical staff bylaws that be arranged for organizing a good corporate governance and as well as the authority of Clinical Privilege. One of hospital bylaws function are preventing and solving the internal dispute and external dispute for ensuring certainty law to overall stakeholders of the hospital, namely: the owner of the hospital, hospital doctor managerial, medical employee and of course the patient.<sup>16</sup>

Based to Article 29 paragraph (1) alphabet r Law No.36 Year 2009 about Health, that every hospital must prepare and implement the Hospital Bylaws. The rule of Hospital Bylaws also as the extension of laws, the other word that the Hospital Bylaws as lex specialist from the law that regulates about hospital, whereas, Law No. 36 Year 2009 such as lex generalist.<sup>17</sup>

## RESEARCH METHODS

The approaching method that used to this research is Juridic Normative, namely a research about law norm validity at one condition that being researched. This research tries to search the law certainty of an appropriate health service by implementing Hospital Bylaws. Being applied law science that states the terms of procedure, signs of implementing the regulations. On this intended research willing to find legalistic, law principles or law doctrines in order to answer the law certainty of good health service in Indonesia.<sup>18</sup>

## RESULTS AND DISCUSSION

### Hospital and Hospital Liability

In legal relationship that happen in the society, the hospital capable to act as law subject such with patient or with other party who needs on health service. As law subject, the hospital that holds legal entity status able to carry on the rights and the obligations.<sup>19</sup> Recently, a development of paradigm about the hospital that it is not merely as a social institution such as above of lawsuits (super body), however, has shifted to be as capable as law subject predicate, the changing of that paradigm be followed up by formatting internal rules that regulate the role dan owner function, manager and medical staff. Based to this issue thence be required a guideline as internal hospital regulation as a reference for a hospital.<sup>20</sup>

In the middle of 20 century starting a change that a hospital capable to be asked for its liability according to doctrine “respondent superior”. In other word, that the hospital capable to hold the responsibility cause of any acts be done by subordinate profession staff such as permanent status or others, except for those whose are in charge as profession task that right now held at the hospitals.<sup>21</sup> The paradigm changing followed by private hospital holding rule. The former private hospital only possible to be established by law entity foundation or the other law entity, since in 1990 Limited Company (Ltd) such as inbound capital investment or outbond capital investment capable to establish the hospital, whereas, for state hospitals changed into Hospital Public Service Agency.

The hospital changes from social unit to become social-economic unit that impacts more complex. To the hospital from a potential to cause the conflict if between the owner, manager and medical staff that regulated conveniently. Hence, that the hospital has to have internal hospital that regulates the relation of four element that stated as internal hospital regulation. By increasing law awareness including law sensitivity on dispute by law that recently happen, so internal hospital regulation becomes such a vital reference for the hospital.

Nevertheless, by the changing of paradigm to the hospital in the world where a hospital such a institution with full capital, full technology. Hence by managing the hospital not merely such social unit. Since then, the hospital starts to be formed such as law subject and such sue target of adverting behavior.<sup>22</sup> Recently, by juridical hospital organization in Indonesia that responsible to health service capable to be categorized into : a. Hospital Management such the organization that owned by law entity b. Government, Foundation, Limited Company, the organization that firstly representative by hospital Principal/Director/CEO c. the doctors who work at the hospital d. Nurse e. Other medical employee and administration Staff, in fact, the hospital not as legal entity.

In the other word, that a hospital not such as an organization that established by a legal entity (government, foundation, Association or other legal entity). Therefore, by law that who is taking the responsibility is legal entity itself not the hospital itself.<sup>23</sup> Generally, the hospital has 4 (four) field of responsibilities: first, Responsible to Human Resource. This based to relationship between employer and employee (Vicarious liability, Respondent Superior, or let the Master Answer). Formerly, this establishing capable to be called universally.<sup>24</sup> Second, professional liability to duty of due care. This means that health service giving such doctor or nurse and other medical human resource has to be based at profession standard measure.

Hence, by law the hospital has to take the responsibility whether there is uncommon cure and care service giving or low standard. What is assumed as a common, up to present time in our country has not existed such a benchmark of itself. By literature view be used of quality of care that has to be afforded to generate on hospital bylaws.<sup>25</sup> Third, the responsibility to facility and equipment. In this part of responsibility including hotel basic equipment, hospital, medical equipment, medic gas et cetera. The thing that be considered

such that equipment has to be safe all the time/medical gas not replaced, ready to use any time. Fourth, the responsibility to building safety and its treatment, for example building collapse, tile falls until injures people.<sup>26</sup> Thence, Article 58 Paragraph 1, Everyone has right to sue as compensation to anyone such health human resource, and or health organizer that cause loss because malpractice or negligence at the moment he/she takes health service. The sue of compensation as meant on Article 1 is not valid for health human resource who acts to safe of her/his lives or preventing to disability of any person at emergency moment. The regulation about sue procedure as referred to Article 1 that regulated in accordance with regulation of laws.<sup>27</sup>

If be viewed from hospital liability that posed by the government and NGO so the responsibility is a equivalent for the society, namely both of them capable to be sued and ask for such compensation whether capable to prove that there is negligence as originally from doctor part, nurse, midwife or there is negligence at hospital managerial part.<sup>28</sup>

### **Establishing Hospital Bylaws**

According to L. Friedmann that to carry on the suitable elements of valid rules in national legal system that cover material component such legal substance, including component structure of legal structure and component structure of legal culture.<sup>29</sup> In the relationship to Indonesia health service development, a readiness on Indonesian global health laws, so firstly that has to be known about what are the nature law and the function of law for Indonesian people that still being modernization proses. This matter will relate strongly to law usefulness at that process.

Basically, a law usefulness capable to be at dual functions, namely, firstly, to develop new laws, second, to strengthen the existing laws and third, to clarify the scope and function of the existing laws. This matter will very depends on laws of nature and laws function in that society.<sup>30</sup> The other side that law norm stated fuzzy, so not able to produce the similar idea and a similar value. This law norm cannot produce on a law reasoning in one uniform and as well as logical.<sup>31</sup> Thence, the hospital organization members often experience ethical dilemma, where at their condition they have to interoperate the good and the bad thing in the moment uncertainty.<sup>32</sup> Hence, it is the best the for establishing Hospital Bylaws that contains rational norms and visible. It means a rule of law consistently creates alternative and optimizing the values at certain limit suitably.<sup>33</sup>

Hilman as the headmaster of Indonesian Hospital Association added as follows: (1) Without Internal Hospital rules, Indonesian Hospital code ethics will no meaning; (2) Without Internal Hospital rules, very prone to the conflicts and prone to collusion, connection and nepotism; (3) Without Internal Hospital rules, the conflict that emerging at the hospital will very difficult to solve and to be prevented; (4) Without Internal Hospital rules, the hospital will determined by who is the strongest. The owner, director or doctors. Hillman added by clarifying that the internal hospital rules has not generated yet, however, the hospital cannot do anything. Forming the existing intern rules such first step as an embryo from Internal Hospital rules that continuously to be completely. Internal Hospital rules according to Hillman be required for guarantee the hospital as profession institution such self-government and for establishing the authority of the hospital.<sup>34</sup>

The Hospital by Laws also capable to be carried on to increase the hospital quality that requiring a continuous improvement process with the individual that can be measured by the institution and national performance target. Management supporting, employee and the government for improving the quality such a vital for effective competence at global market<sup>35</sup> There are four absolute senses that become a part of integral from management quality, namely: (1) A quality definition such the definition of quality is conformance to requirements); (2) A quality system such as the system of quality is prevention; (3) a

performance standard as the performance standard is zero defects; (4) a measurement of quality is the price of nonconformance.<sup>36</sup>

### **The Hospital Bylaws and Law Certainty on Health Service Regulations at the Hospital**

According to Gustav Radbruch as quoted by Khairani that the law certainty as a first sense of law aiming namely, in order to be come as a positive law until be validated certainly and has to dutiful. By achieving to the aim, the laws must divide the right and the obligation inter personal in the society, dividing the authority that regulates how to solve the law problems and keeps the law certainty. By the existence of law certainty, a society knows clearly between rights and obligations according to the laws, without the existence of law certainty then a people will not know what to be done, to be unknown the acts that he/she does wrong or good thing, prohibited or legal by law.<sup>37</sup>

A law certainty such justifiable protection for arbitrary actions that means that if anyone will get something that he/she dreams to at certain circumstance. A society hopes the existence of a certainty law cause of the existence of law certainty the society will more peaceful. The law tasks such creating a law certainty because the law aims to keep a peaceful in the society.<sup>38</sup> Next on, in order to protect hospital progress, human resource hospital as well as the patient so the hospital necessary to have Hospital bylaws. The regulation covers the rules that relate to health service, employee, administrative and management, fair and useful for a better health service, because the law aim not only law certainty, however, also a justice and a benefit of the regulation itself.<sup>39</sup>

The Hospital bylaws concept is for law certainty of good health service in Indonesia that capable to be seen from four departures of views, namely:

- 1) From the point view of accreditation, Hospital by Laws is the items needed for hospital accreditation. Accreditation checks whether there is clarity, regulatory regularity, certainty, procedures that must be followed, and so on in health services
- 2) From a legal point of view that hospital Bylaws hospital by Laws is a further rule of the law on health services, where the law only regulates things in general, so it still has to be further elaborated in the rules below which are more concrete/more clear and firm. Thus, it is said that Hospital Bylaws can be used as a benchmark regarding the presence or absence of an error/error in a legal matter.
- 3) Hospital Bylaws can be used as more detailed evidence about whether something was right or wrong, therefore of course Hospital bylaws must not conflict with higher laws
- 4) From risk management perspective hospital bylaws can be a tool to prevent or to prevent the recurrence of an adverse risk. For example, against Malpratek medic. A hospital that has made rules and has also run according to the provisions made, then the hospital or its doctors and other health service implementers are difficult to blame.<sup>40</sup>

### **The Nature of Hospital Bylaws**

Before the hospital by laws able to be used such as point of departure that the hospital bylaws has to achieve some kind of elements such, nature, characteristics, namely:

- 1) Hospital by laws as adalah tailor- made. Every hospital has typical kind of specific nature. The type and a specific nature absolutely depends to its establishment time, who establishes, who owns main role, are there shareholder, is it such association et cetera. Therefore, a substance and a formulation from every hospital bylaws impossible to be the same. Every hospital has a specific individually. These senses may differ the Hospital bylaws at one to the other. Then, it is impossible to get into hospital bylaws one to another or to be uniformed it. Only the main features that able to be determined.
- 2) The function of hospital bylaws such as an extension of the law. General law that applies to everyone contains general rules in general in outline only. Not directly applied in every medical case. While hospital law and medical law are caustic in nature.

- 3) Manage the entire organization of the hospital. Hospital bylaws regulates all ins and outs: Administration, medical service, medical support for treatment, provisions concerning doctors, patients and employees. Thus, this comprehensive arrangement is required for accreditation.
- 4) The Hospital bylaws formulation must be firm, clear and detailed, it must be such that it cannot be interpreted individually, so it must be very strict, so there is no room for different interpretation.
- 5) Must be tiered systematically and in stages. The lower level should not conflict with the higher one.<sup>41</sup>

At present, these legal provisions and regulations are required as a reference material in resolving internal problems in the hospital itself. This is not only in the relationship between doctors and patients, but is much broader, namely the legal framework and the scope of legal relation in a hospital. In terms of government accreditation of hospitals, the contents Hospital bylaws and medical staff bylaws will be an important consideration in assessing the clarity of the regulations and the procedures made by the hospital itself.<sup>42</sup> Hospital by Laws is the embodiment of the principle of law certainty. The principle of law certainty provides guarantees for the party involved in medical services in the hospital to be legally responsible in the event of a dispute. Likewise, Hospital bylaws should be the legal basis for medical operations in the hospitals.<sup>43</sup>

In Indonesia today, in the organization of hospitals legally responsible for services can be categorized into”

- 1) Hospital management as an organization that owned by legal entity
- 2) Government, Foundation, Limited Corporation(Ltd), Association which in a first instance is represented by the head of the hospital, Director/CEO
- 3) The doctors who work for the hospital
- 4) The nurse
- 5) For other health workers and administrative staff, the hospital is not a legal entity. In essence, a hospital is an organization that established by a legal entity (government, foundation, association, Limited Corporation (Ltd), or other legal entity.

### **Definition of Hospital Bylaw**

The word bylaws means city regulation/local regulation then called bylaws cause the product is an extension of existing legal provisions from the central or from local government made by organizations or legal entities including hospitals.<sup>45</sup> Some meanings from the literature are explained that bylaw or bye-law is the medical staff organization shall purpose and adopt bylaws, rules and regulation for its internal governance which shall effective when approved by board. This bylaws shall create administrative unit to discharge the function and responsibilities assign to the medical staff by the board.<sup>46</sup> The medical staff organization shall purpose and adopt bylaws, rules and regulations for its internal governance which shall be effective when approved by the board. This bylaw shall create administrative unit to discharge the function and responsibilities assign to the medical staff by the board.<sup>47</sup>

Thus, hospital bylaws and medical staff bylaws contain legal provisions and regulations that are systematically made by hospital, regulation all management within a hospital itself. In Indonesia hospital bylaws and medical staff bylaws can be interpreted as basic rules or hospital internal regulations for medical staff. Hospital bylaws come from two words, namely hospital and bylaws [institutional regulation]. While Black’s law dictionary defines it as “the right and the obligations of various officers, person or groups, within the corporate structure and provide rudes for routine matters such as calling meetings and the like.’ So the true meaning of hospital bylaws is a set of rules made by the hospital (unilaterally) and only applies to the hospital in question.<sup>48</sup>

According to Sofyan Dahlan, described that hospital bylaws as internal hospital regulation basic that consist of by two namely corporate bylaws and medical staff bylaws. The purpose of hospital bylaws in order to create corporate bylaws and in order to create

good corporate governance, for medical staff bylaws in order to create good clinical governance. Hospital by laws was validated by the owner of the hospital or legal entity authority that by the hospital owner distributes an authority to validate and legally only valid at the hospital itself as called as tailor's made.<sup>49</sup>

As for basic laws on establishing hospital bylaws in Indonesia capable to be discovered on several legal rules, namely:

- 1) Article 1, Article 14, and Article 30 Law No. 36 Year 2009 about Health Laws
- 2) Article 29 paragraph (1) alphabet r Law 44 Year 2009 about Hospital, states that the hospital has to prepare and implement their internal hospital bylaws.
- a) Law No. 25 Year 2009 about Public Service. The responsibility hospital for public such the organizer of public service in accordance with Article 15, namely regulates about public that the purpose of public service implementation are as follows:
  - b) The realization of limitation and a clear relation on rights, obligations, responsibilities, obligations and the authority the entire parties that related to public service.
  - c) The realization of an appropriate organizing service system that suitable to general government principles and good corporation
  - d) The fulfillment on public service organizing in accordance with regulatory legislations.
  - e) The realization of protection and law certainty for society on public service organizing
  - f) Indonesian Republic of Health Minister No. 772/Menkes/SK/VI/2002 about The Guidelines of Internal Hospital bylaws regulations.
  - g) Indonesian Republic of Health Minister No.755/Menkes/Per/IV/2011 about Medical Committee Hospital Organizing.

## Hospital Bylaws Concept

Basically, corporate by laws provides roadmap for Hospital operational such a business entity or public service body. As for medical staff by laws provides framework for doctor and his/her maids in order to be able to implement good professional functions in order to guarantee the realization of quality service and patient safety.<sup>50</sup> From the clarity as mentioned above and recently facts, so the owner of the hospital capable from a state party or private party, state owner capable such company form, Public Service Agent and Non-Public Service Agent.

State-Owned, Enterprises (BUMN), District Enterprises (BUMD) or Nationally-owned Entities Legal Agency. Private owner can be investor from Limited Corporation(PT), Cooperation, Individuals, Families also can be non-investors (from associations or foundations). From this point of view, can be understood that if the owner needs to be represented by a supervisory for the leader/director/executive, medical staff. Thus, it is necessary to regulate corporate leadership between the supervisory body and the board of directors, clinical leadership between the board of director and the medical committee/functional medical staff. Good corporation between these agencies can give birth to corporate governance through the policies of the board of directors and clinical governance through the medical committee in the medical staff community, this relationship arrangement which then gave birth to the concept of hospital bylaws.<sup>51</sup>

Therefore, hospital by laws as a legal product is a hospital household budget set by the hospital owner or his representative. However, hospital by laws is not a collection of technical administrative or clinical regulations for a hospital, that's why standard operating procedures or fixed procedures, job descriptions, Director's Decrees and the like are not hospital by laws, but are merely operational technical policy. Thus, Hospital bylaws are rules governing the organization of the owner or those who represent the role of the duties and the authorities of the hospital director, the organization of the medical staff, the roles, duties and the authorities of the medical staff.<sup>52</sup>



Hospital bylaws in the context of implementing good governance (good management, control mechanisms of a business entity against its elements so that they behave accurately) is aimed at maintaining the existences of this business entities both in corporations and clinical services in hospitals, clear regulations are required regarding the roles, duties, obligations and working relationships various related parties in the implementation of health services in hospitals.<sup>53</sup>

There are at least three main bodies or pillars that required to clear relationship arrangements in hospital by laws, so that the existence of hospitals in good health services can run safely and with quality. The three bodies are the owner (represented by the governing body or trustee), the leadership or executive body and the medical staff. Thus, the essence and essence of hospital by laws is to regulate the division of duties, obligations and authorities in a clear, firm and proportional manner between the three components, guidelines for hospitals in providing health services and can eliminate any conflicts of interest that may occur.

Thus, it can be stated that the hospital bylaws function as follows:

Some recommendations for hospital owner to run the supervisions, namely as follows:

- 1) References for director owner in conducting supervision
- 2) Reference for director in managing the hospital
- 3) Reference for directors in formulating operational policies
- 4) Means to ensure the effectiveness, efficiency and quality of services
- 5) Means of legal protection for all parties related to the hospital
- 6) References in solving conflict in the hospital.<sup>54</sup>

If be examined by deeply Commonly, If be examined by deeply that the management has several characteristics, namely:

- 1) The existence of confidence in one's abilities
- 2) There is a delegation of duties and authority (rights and obligations)
- 3) Existence of scope authority limits
- 4) The existence of freedom/independence (freies ermessen) in policy in the sense of:
  - a) Determine the choice (of the existing alternatives);
  - b) Disconnect, in the sense of accepting or rejecting
  - c) There is legal responsibility (legal liability).<sup>55</sup>

## Hospital Bylaws dan Medical Staff Bylaws

Medical Staff Bylaws aims to create good clinical governance. Clinical governance; a system that is able to demonstrate (both in primary and secondary care) that the system guarantees quality improvement efforts at every level of health care. Hospital organizations must be accountable for the health services they provided.<sup>56</sup> Basically, medical staffs bylaws are classified as hospital bylaws. However, because this section requires its own arrangement and clarity, it is separated from the hospital bylaws in the preparation. Thus, hospital bylaws only regulate the administrative component (administrative bylaws) that regulates which regulates the division of tasks, obligations, authorities and responsibilities between the owners, government agents (assemblies of trustees) and hospital leaders or directors.<sup>57</sup>

On maintaining the quality of services medical responsibilities, medical staffs are expected to be able to self-govern, self-control and self-discipline. Every medical staff in a hospital must be aware that practice in a hospital is different from private practice at home because doctors, dentists, and specialists have collective autonomy and are accountable for services to the leadership through the medical committee. Therefore, every doctor must comply of all applicable procedures and service standards. In medical staff bylaws, it is regulated by:

- 1) Name and purpose of medical staff organization

- 2) Medical staff membership
- 3) Category of medical staff: permanent doctors, guests, consultants, teaching staff, residents, as well as the arrangement of authorities and responsibilities
- 4) Medical services
- 5) Medical committee
- 6) Regulating regarding medical services
- 7) Mechanism of review and revision
- 8) Arrangements related to the doctor's obligations in filling out medical records, approval of medical actions and others.<sup>58</sup>

## Scope, Function and Benefits of Hospital Bylaws

The important thing that must be considered in drafting hospital bylaws is that it must not conflict with human rights, applicable laws and regulations. It should be understood that hospital bylaws are guidelines for all people who work or who are patients (clients), and at the same time regulates the limit of authority, rights and obligations of each party as well as ways to carry out the obligations or obtain rights.

Sofwan explained that the hospital is an institution that is multifunctional, capital-intensive, technology-intensive, service-intensive and also labor-intensive. Its operation requires guidelines to ensure the proper implementation of all Hospital activities. One of these guidelines is hospital bylaws, the content of which also covers aspects of the hospital.<sup>59</sup>

In America, the hospital are generally founded on the basis of the "three-legged stool model" consisting of the Board of trustees (board of commissioners), administration and medical staff. Administration is a component of the hospital that is responsible for daily management so that hospital functions are divided into operational departments can run well. Meanwhile, the medical staff which is organized into clinical departments are responsible for all health services in the hospital.<sup>60</sup>

The difference between the hospital and the other corporations according to Samsi Jacobalis is the unique that medical staff is self-governing entities, so the hospital bylaws divided into corporate by laws or administrations bylaws and medical staff by laws. Hospital by laws as a business entity are basically the same as corporations in general, namely providing hospital operating instructions, the contents of which are about the governing board and its relationship with the hospital's Board of Directors and Medical Staff. The main points of the substance of the corporate by-laws include, among others, a statement of the hospital's vision, mission, roles and objectives; mechanism for selecting members, obligations and responsibilities of the governing board; the governing board's organizational structure and its relationship with the Board of Directors and Medical Staff, requirements for determining Medical Staff; mechanism for determining, reviewing and revising by-laws, while medical staff by-laws specifically regulates hospital medical personnel. Therefore, hospital by laws contains a description of the outlines of the medical staff organization, procedures for granting and terminating permits to become medical staff, medical staff qualification statements, ethical statements, requirements for maintaining accurate and complete medical records, informed consent regulations and so on.

Both Samsi and Sofwan seem agree to Ministry of Health's effort to divide medical staff by-laws into two, namely medical staff by-laws and nursing staff by-laws considering the professions in hospitals. In fact, Samsi even suggested changing the term to clinical staff by-laws consisting of medical staff, nursing staff and medical support staff by-laws. The concept of bylaws for the three professional groups should be compiled and discuss first among them and then discussed with the Board of Directors and approved and ratified by the Board of Commissioners, Samsi suggested that the hospital by law form could be formulated into Hospital Regulations. With the existence of a complete and well-implemented hospital

by law, it is hoped that it can help realize professional and ethical medical services, especially in the free market era in the future.

This is of course in line with the concept of legal codification, where various rules can be classified into certain types of law based on certain principles into one text. This legal codification is carried out to fulfill and achieve certain objectives, namely; first, to achieve unity and uniformity of rules (*rechseenheid*); second, to achieve legal certainty (*rechtszekerheid*); and the third, for the simplification of the rules (*rechtsvereenvoudiging*).

In carrying out legal codification the three of the minimal goals of codification as stated above do not stand alone, because the purpose of codification will not be possible if only one or two goals are actually realized. As stated in People's Consultative Assembly Decree MPR No. IV/MPR/1973 which emphasized that, the development of legal field must be able to direct and accommodate legal needs in accordance with the legal awareness of the people which is developing towards modernization according to the levels of development progress in all fields, so as to create order and legal certainty as infrastructure that must be demonstrated. Towards increasing the development of national unity as well as functioning as a means of supporting the development of modernization and comprehensive development, which is carried out by:

- 1) Increasing and perfecting of development of national law, among others by conducting renewal, codification and unification of law in certain fields by paying attention to legal awareness in the community
- 2) To regulate the functions of legal institutions according to their respective proportions
- 3) Increasing the ability and authority of law enforcement

Furthermore, in the view of civil law, hospital bylaws can be used as standard clauses (standard agreement) that can function as laws for parties who consciously enter into ties with hospitals; both as patients, managers, medical staff, non-medical workers and so on. One more thing that should not be forgotten in the context of preparing hospital bylaws is to pay attention to various ethics from various professions including hospital ethics, which are involved in providing medical services. Sofwan Dahlan mentions the benefits of hospital by laws as follows:

- 1) Guidelines for all who work in the hospitals
- 2) Means by ensuring the effectiveness, efficiency and quality for the implementation of the hospital's duties and obligations to the community
- 3) Guidelines for clients
- 4) Institutions accreditation prerequisites
- 5) Means of legal protection for all parties
- 6) Reference for dispute resolution, inside or outside the court.

Thus, the interests of hospital bylaws can be seen from three point of views, for improving the quality of services. In this case Hospital bylaws can be an instrument for hospital accreditation. Hospitals need to make standards that apply both at the hospital level and for each medical service, nursing services, administration and management of medical records, emergencies service and so on. These standards consist of elements structure, process and results. The structural elements include physical facilities, organization, human resources, financial systems, medical and non-medical equipment, charters/by-laws, policies, Standard Operating Procedures/Constant procedures, and programs.

The process is all operational implementations of the hospital staff/units/sections to the patients/families/communities that use the hospital services. Outcomes are changes in the patient's health status, changes in knowledge/understanding and behavior that affect his future health status, and patient satisfaction. The second interest, from a legal perspective, Hospital Internal Regulations hospital by laws can be a benchmark for whether there is an

negligence or error in a medical law case. In Hospital Bylaws, more detailed evidence must be contained in the Hospital Internal Regulations Hospital Bylaws.

Third, in term of risk management, hospital bylaws can be such a tool to prevent or prevent the recurrence of an adverse risk. Thus, patients will be more protected according to the principle of patient safety. The main problem now is that the ability of health management which is the key to the success of health development at this time is not fully adequate. Some of the factors contributing to this are the inadequacy of the health information system to be disseminated to the public, the integration of health services that has not gone well, and the control and supervision and evaluation of established programs are not yet stable. In addition, the organizational management and working procedures of the service system organized by the government, both those organized by the central and local governments, as well as health efforts managed by the community, including the private sector, have not been formulated in detail.

Furthermore, the existence of hospital bylaws as one of the assessments of hospital accreditation is a process of service quality improvement activities carried out continuously by hospitals. Accreditation itself is an acknowledgment of the quality of hospital services, after an assessment has been made that the hospital has met accreditation standards, which include structure, functions and processes, as well as results/performance that must be applied in order for a hospital to get accredited recognition.

## CONCLUSION

Good health service in hospitals as a relationship between legal rights and obligations of health is a human rights, therefore hospitals are required to improve their service management through the establishment of hospital by laws, so that available resources can be utilized more effectively and efficiently, in addition to the function of social by law is to prevent and resolve internal disputes and external disputes as well as to ensure legal certainty between hospital stakeholders, doctors and medical personnel as well as better health services for patients. The best formation of hospital by laws is to contain norms that are rational, not vague, consistent, concrete, firm and maximize value within certain reasonable limits, which are made as further rules from the law (higher rules) to health services, so that it can be used as a benchmark regarding whether or not there is a negligence/error in a legal matter, which consists of corporate by laws and medical staff by laws.

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## ENDNOTES

- 1) Purnomo Bambang, Health Laws, Magistrate Education Program, Doctor Faculty Magistrate Hospital Management, Gajah Mada University. Yogyakarta, 1996, p. 6
- 2) Hariyani Safitri in preamble of the constitution of the WHO that states in the International Health Conference was held in New York from 19 June until 22 June 1946 and has signed by 41 countries on 22 June 1946.
- 3) *Ibid.*
- 4) Hatta Moh. Health Laws & Medic Disputes, Liberty, Yogyakarta, 2013, p. 2.
- 5) Rahardjo. Satjipto, Progressive Enforcement, Kompas Book Publisher, Jakarta, 2010, p.257
- 6) Recently, there some hospitals were sued cause the health service are not suitable as be hoped, namely (1) Raad van justitie (District Court) Medan (Indich tijdschrift van het Recht 148 p 793), that the judge assumed the doctor has done surgery that also done a violence to Article 307 Penal Code. This matter

happened cause before giving the injection he or she had to check if the materials that used for the injection appropriately right, because this matter he or she did not do so he or she felt guilty that has done a huge negligence; (2) A case of Mrs. Dr. The Fong Lan, 25 June 1958, District Court, judgeas Mr. Soedja R.Soetarno, throughout verdict decree No. 1741/1960/ date/2/3/1960. According to that decree that there is a crime case in accordance with Article 304 Jo 306 Penal Code, Article 359 Jo 361 Penal Code; (3) The event that overwrote Mrs.Monita br Sinaga, The Mother who lost her baby after giivingbirth at Vita Insani hospital including suffered of gender infection, this case impacted to hundreds of protesters from Pematang Siantar in North Sumatera (4) One member from a society in Middle Java died that suspected cause malpractice when it was treated at the hospital,the victim was given an expired infusion fluid at the hospital, until at the end the patient died. (5) A woman (22 years) died no longer after undergoing a caesar operation in Hospital X in Surabaya. The victim experienced the infection in urine channel and thence and spread to the brain; (6) Andre, age 25 years, is healthy consition, except there is a slight disorder in his inner ear. According to ENT doctor, it must be done routine surgery in patient earrum. Nevertheless, indeed, Andre has died on surgery table, by that time that body temperature patient increased up to 43,2 degree of Celcius, none of them knew that controller tools available quite complete in surgery room,nevertheless some of the equipments were not installed at all; (7) A baby age 6 months who lost one of the eye cause the surgery in one of the Hospital in Sumenep, and there still many other cases. Further on, see on Health Laws Series Book, Medical Negligances, Faculty of Medicine, Universitas of Indonesia, Hall Publisher Balai FKUI, Jakarta, 1990, p. 3.

- 7) Health Minister Regulation No.772 Year 2002 about Guidelines of Hospital bylaws.
- 8) Nasution Bahder Johan, Doctor's Responsibility on Health Laws,Rineka Cipta Ltd, Bandung, 2005, p. 3
- 9) *Ibid.*
- 10) Law No. 36 Year 2009 about *Health*, State Gazette No. 144 Year 2009, and Supplement of State Gazette No. 5062.
- 11) Law No. 29 Year 2004 about *Doctor Practice*, State Gazette No.116 Tahun 2004, and Supplement of State Gazette No. 4431.
- 12) Law No. 36 Year 2014 about *Health Staffing*, State Gazette No. 298 Tahun 2014, and Supplement of State Gazette No. 5607.
- 13) *Ibid.*
- 14) That meant by humanity values such organizing the hospital was carried out by good conducts and humanity without differing ethnics, society, religion, social status and race. Whereas, the meaning of ethics and professional are by organizing the hospital that was carried out by health staffings whose own profession ethics and professional conducts as well as to dutiful hospital ethics. Siswati Sri, *Ethics and Health*, Rajagrafindo Persada Ltd., Jakarta, 2017, p 80.
- 15) *Asia-Pasific- economic cooperation (APEC)*, as economics forum of 21 countries at Pacific Ring that aims to confirm economics development, strengthen community and encouragefree trades in Asia Pacific region also including service at health sector.
- 16) Azwar Azrul, *Introduction to Health Administration*, Bina rupa Aksara, Jakarta, 1996, p. 82.
- 17) Yustina Endang Wahyati, *Knowing Hospital Laws*, Keni Media, Bandung, 2012, p 2.
- 18) Hanafiah Yusuf and Amir Amri, *Doctor's Ethics & Health Laws*,EGC Doctor Publisher Book Jakarta,p. 194.
- 19) J. Guwandi, *About Malpractice Medical Lawsuit*, Hall Publisher Medicine Faculty Universitas of Indonesia, Jakarta, 2010, p. 58.
- 20) *Ibid.*
- 21) Marzuki Peter Mahmud, Law Research, kencana Prenada Media Group, Jakarta, 2006, p. 36.
- 22) Legal entity (*rechspersoon*) is a set of human or an organization that distributed nature such as firm subject of law. Further on, see Praptianingsih Sri, *The position of Nurse Laws on Health Efforts in the Hospital*, Rajagrafindo Persada Ltd, Jakarta, 2006, p. 89.
- 23) *Health Minister Regulations* No. 722 Year 2002 about *Internal Hospital Bylaws Regulations*, p. 1.
- 24) *Loc. Cit.*, p.140. Up to 19 century still the doctrine valid that states the hospital such a institution or a house that merely organizing social aids. For humanity mission, thus cannot be sued cause of charitable community. This hospital doctrine based on Article 1 of trust theory, reasonly that if the hospital pays the compensation, it means the hospital will run out of funds and absolutely will destroy all of humanitarian tasks and Article 2 of implied waiver theory that reasoning of unethical if the hospital be sued or demanded so patient rights will released on the time the patient asking a help for treatment at the hospital.
- 25) Purnomo Bambang, *Op.Cit.*, p. 3.
- 26) *Ibid.*
- 27) *Ibid.*, p. 7.
- 28) *Ibid.*

- 29) A tile very slippery until the visitors fall down and suffering broken bond. In United States this problem regulated on *Occupiers liability Acts*. Whereas in Indonesia regulated on Article 1369 Code of Civil Law. *Ibid*.
- 30) Law No. 36 Year 2009 about Health.
- 31) Fuady Munir, Modren Doctrines on *Corporate Law and its Extensin on Indoensia*, Citra Aditya Abadi, Jakarta, 2002, p. 4.
- 32) Lawrence M. Friedman, *American Law : An Introduction, Second Edition, Introduction to State Laws*, Basuki Wishnu (translator),Tatanusa, Jakarta Ltd, 1998, p. 8.
- 33) Koeswadi Hermin Hadiati, *Some Laws Problems on Medic*, Citra Aditya Bakti Ltd, Bandung, 1993, p. 173.
- 34) Jeremy Bentham, *Legislations Theory*, Publisher Nusa Media & Nuansa, Jakarta, 2006, p. 25.
- 35) Organization structure such formal pattern that classifying people on jobs. The structure often described throughout organization structure. A process as an activity that giving lives to organization structure. The communications, decisions taking and organizational development such as an example process in organization. Sometimes, to undrestand the communication interpretation process and on taking decisions will provide accurate results by exploring the organization conducts rather than comparing above structural approaching. See James Gibson, John Ivancevich, James Donnelly, *Organization* eighth edition Vol. 1, Saputra Nunuk (translator), Binarupa Aksara, Jakarta, p. 9.
- 36) These choices made by following six steps from *rational decision-making model*, other than that, there are some certain assumptions that based on to this model. Stephen P. Robbins and Timothy A. Judge, *Organizationl Behavior*, Publisher Salemba Empat, Jakarta, 2015, p. 189.
- 37) Yusuf Hanafiah and Amri Amir, *Op.Cit.*, p. 200.
- 38) The improvement of hospital quality not such as a strategy enterprise theory, but also as individual responsibility, a part of cultural heritage and such an important source of national pride. A commitment for the quality as a behavioral that formulated and demonstrated in every scope of activities and lives as well as by having a closed characteristic relationship with society. Ariani Dorothea Wahyu, *Management of Approaching Quality of Qualitative Sides*, Ghalia Indonesia, Bogor, 2003, p. 3.
- 39) Wijono Joko, *Management for Health Service Quality, Theory, Strategy And Aplicationi*, Journal Airlangga UniversityPress, Vol. 1, 1999, p. 7.
- 40) Khairani, *Law Certainty on Outsourcing Worker Rights Judging from the Employment*, First Edition, RajaGrafindo Persada, Ltd, Jakarta, 2016, p. 17.
- 41) Law certainty not such Articles on laws, however, also there is the existence on judge consistence to follow the judge former verdict between one to another for the same case that has been verdicted. Mertokusumo Soedikno, *Chapters of Laws Discovery*, Citra Aditya Bakti, Yogyakarta, 1993, p. 15.
- 42) *Ibid.*, p. 24.
- 43) J. Guwandi, *Op. Cit.*, hlm. 55
- 44) *Hospital Bylaws* is different with hospital laws cause this laws such as a regulation that issued by the government as a common regulation and relating to maintain and health service, while Hospital Bylaws and Medical Staff bylaws was designed detailed by its hospital needs or called as *tailor's made*. *Hospital by Laws dan Medical staff bylaws* such a law extension of internal hospital needs *Ibid*. p. 57.
- 45) Hanafiah M. Yusuf and Amir Amri, *Op. Cit.* p.162.
- 46) J. Guwandi, *Embracing Hospital Bylaws*, Publisher FKUI, Jakarta, 2004, p.8
- 47) *Ibid*.
- 48) Dahlan Sofwan, *Health Laws*, Publisher Universitas Diponogoro, Semarang, 1999, p.146.
- 49) *Ibid*.
- 50) *Ibid*.
- 51) *Ibid*. p.147.
- 52) *Ibid*. Also look at <https://anzdoc.com/hospitalbylaws>, accessed at 09.26 WIT, on 7 July 2021.
- 53) *Ibid*.
- 54) Hanafiah M. Yusuf and Amir Amri, *Op. Cit.* p.201.
- 55) Health Minister Regulation No.772 Year 2002 about Guidelines of Hospital Bylaws.
- 56) Hanafiah M. Yusuf and Amir Amri, *Op.Cit.*, p.163.
- 57) *Ibid*.
- 58) J. Guwandi, *Op. Cit.*, p. 7.
- 59) *Ibid*.
- 60) *Ibid*.
- 61) *Ibid*. p.165.
- 62) Dahlan Sofwan, *Op. Cit*.
- 63) *Ibid*.

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