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Hospital's Responsibility As A Business Entity For Patient Losses As Consumers From The Perspective Of Legal Protection.

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Abstract

This study examines the legal relationship between patients and hospitals in the context of malpractice, particularly in cases involving operational errors. In this relationship, patients are considered consumers, while hospitals are regarded as business entities. The consumer protection perspective is rarely employed to assess hospital accountability, despite its importance in viewing hospitals as accountable business entities. The issues examined in this research are the extent of the hospital's responsibility as a business entity and the legal remedies available to patients whose consumer rights have been violated. This study demonstrates that the hospital's liability can be analyzed under Article 46 of the Hospital Law and highlights violations of the Consumer Protection Law Article 4 paragraphs (1) and (3), the Health Workers Law Articles 68 and 84 paragraph (1), Article 45 of the Medical Practice Law, and Article 37 of the Hospital Law. Legal remedies available to patients as consumers include dispute resolution mechanisms, civil legal remedies under the Consumer Protection Law, and other consumer legal remedies.

Keywords: Liability, Hospital, Consumer, Legal Protection, Loss

INTRODUCTION

Currently, violations of consumer rights by business actors, including healthcare service providers, frequently occur. In the context of the relationship between consumers and business actors, patients are considered consumers, while hospitals are regarded as business entities. Doctors working in hospitals act on behalf of the hospital as employees, and all of their actions

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reflect the hospital's responsibility.

As consumers, patients have the right to receive healthcare services that are safe, comfortable, and meet established safety standards. If negligence or errors by doctors result in harm to patients, the hospital must be held accountable by providing compensation for such losses. Generally, patients do not possess in-depth medical knowledge and often fail to realize when they have become victims of malpractice.

Malpractice literally means "incorrect, improper, or unlawful medical practice that violates legal and ethical standards." However, Indonesia does not yet have specific regulations governing medical malpractice, and existing laws tend to focus more on administrative aspects of medical practice.

Medical malpractice is rarely examined from the perspective of the legal relationship between consumers and business actors. In fact, this perspective is important for evaluating the responsibility of hospitals as providers of healthcare services, especially when employed doctors make errors that harm patients. The legal relationship between consumers and business actors creates binding rights and obligations for both parties.

This research focuses on examining the legal relationship between patients and hospitals, particularly in malpractice cases arising from surgical errors. In the case studied, a doctor who was supposed to operate on the patient's left leg instead performed surgery on the right leg, which had no medical issues. This error was clearly observable by the patient, even without medical knowledge. Therefore, this study aims to analyze the responsibility of hospitals as business entities and the legal remedies available to patients whose consumer rights have been violated, based on consumer protection law.

RESEARCH METHOD

This study applies a normative juridical method using a descriptive approach. The data utilized consists of both primary and secondary data. Primary data was obtained through semi-structured interviews with the public, while secondary data was collected from primary, secondary, and tertiary legal sources through library research. All data were analyzed using a qualitative approach, and conclusions were drawn using deductive reasoning.

RESULTS AND DISCUSSION

ES previously experienced a motorcycle accident in Sibolga, which caused an injury to the left leg. Subsequently, ES also fell in the bathroom and was referred to MTM Hospital in Medan.

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At the hospital, an MRI examination of ES's left leg revealed Achilles tendinopathy, requiring approximately two months of physiotherapy. After undergoing physiotherapy and observation, ES underwent surgery on November 23, 2022, performed by Dr. PS.

However, after the surgery—which involved incisions of approximately 3 cm on the heel and 2 cm on the top of the foot—it was discovered that the operation had been performed on the right leg instead of the injured left leg. As a result of this error, ES is now unable to walk and must even be carried to the bathroom.

Hospital Responsibility as a Business Entity Providing Healthcare Services

To analyze the responsibility of hospitals as healthcare service providers for patient losses from a consumer protection law perspective, it is necessary to first examine the legal relationships between the parties involved, namely:

1. Patient and Hospital

   The legal relationship between patients and hospitals is regulated by Law Number 44 of 2009 on Hospitals. This relationship arises when a patient visits a hospital for consultation and requires medical services. In the provision of healthcare services, every medical action must obtain consent from the patient or their family, except in cases where the patient is legally incapable or in emergency situations.

2. Patient and Doctor

   The legal relationship between patients and doctors is governed by Law Number 29 of 2004 on Medical Practice. This relationship is established when a patient consults a doctor and receives medical services. Article 39 emphasizes that medical practice must be based on mutual agreement between the doctor and the patient, including efforts to maintain health, prevent disease, improve health, treat illness, and restore health.

3. Doctor and Hospital

   The relationship between doctors and hospitals arises when doctors, as healthcare professionals, work in hospitals that provide healthcare services. This legal relationship is regulated by Law Number 36 of 2014 on Health Workers. It is characterized as an industrial civil relationship, where doctors act as professional workers and hospitals as employers, with corresponding rights and obligations.

After examining these legal relationships, the next step is to transform the healthcare legal framework into the framework of consumer protection law. In the alleged malpractice case discussed in this study, this transformation can be achieved by interpreting relevant healthcare

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legal facts within the context of consumer protection law, namely:

1. Patient as Consumer
2. Hospital as Business Actor
3. Doctor as Employee of the Business Actor

Article 46 of the Hospital Law stipulates that hospitals are legally responsible for losses suffered by patients due to doctor negligence. Considering that hospitals operate with a business orientation, it is important to evaluate the extent of their liability as business actors.

1. *Violation of Consumer Rights by Business Actors*

   In the malpractice case experienced by ES, from a consumer protection perspective, the incident constitutes an error causing loss. Such errors can be categorized into:

   (i) errors by the business actor; and

   (ii) errors by professional workers employed by the business actor.

   Although these are related, there are conceptual limits to liability. In this case, there are violations of Law Number 8 of 1999 on Consumer Protection, particularly Article 4, Article 7, and Article 8 paragraph (1) letter (a). These violations resulted in physical harm to the consumer, such as the inability to walk and carry out daily activities, forming the basis for establishing business liability.

2. Liability of Business Actors

   According to Article 19 of the Consumer Protection Law, business actors are responsible for providing compensation for damages caused by their actions. The law adopts a reversed burden of proof, meaning the business actor must prove that they are not at fault. Therefore, liability is generally presumed.

   If negligence by employees is assessed under the principle of corporate liability, the business actor is also responsible for those actions. As a form of accountability, the business actor has agreed to provide compensation and medical treatment to the consumer until full recovery of both legs.

   On the other hand, as professional workers, healthcare providers are also bound by other legal provisions beyond consumer protection law. Therefore, liability may extend beyond civil responsibility to include criminal liability, especially when negligence causes serious injury or death.

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Legal Recourse for Patients, in Their Capacity as Consumers, Against the Losses They Have Incurred.

To analyze legal remedies available to patients as consumers, it is necessary to first identify the types of losses suffered, both material and immaterial. In this case, the consumer suffered significant physical losses, such as requiring a wheelchair due to the surgical error. The consumer not only lost the ability to walk but also needed assistance for basic activities such as going to the bathroom. In addition, the consumer suffered immaterial losses, including psychological impacts such as disappointment, anger, sadness, and other negative emotions. These losses are difficult to quantify but clearly reduce quality of life and a sense of security. Material losses may include:

(i) financial losses related to the goods or services provided by the business actor;

(ii) costs incurred to obtain such goods or services; and

(iii) interest on loans used to obtain those goods or services.

After identifying these losses, it is necessary to evaluate available civil legal remedies, including alternative dispute resolution mechanisms in Indonesia.

1. Dispute Resolution Law

Dispute resolution is the process of resolving conflicts between two or more parties. There are two main pathways: litigation and non-litigation.

Litigation refers to dispute resolution through the courts, including general courts, religious courts, or administrative courts. In litigation, disputes are resolved by a judge as a third party who issues a binding decision, known as adjudication.

In contrast, non-litigation involves dispute resolution outside the courts, where parties do not rely on third-party decisions. This process is commonly referred to as Alternative Dispute Resolution (ADR), typically used in civil cases and applied when disputes have not yet been brought before a court.

Non-litigation mechanisms emerged as a response to the limitations of litigation, particularly adjudication, which can be time-consuming and whose decisions are not final until all legal remedies have been exhausted.

Based on this classification, the forms of dispute resolution available in Indonesia can be illustrated in the following scheme.

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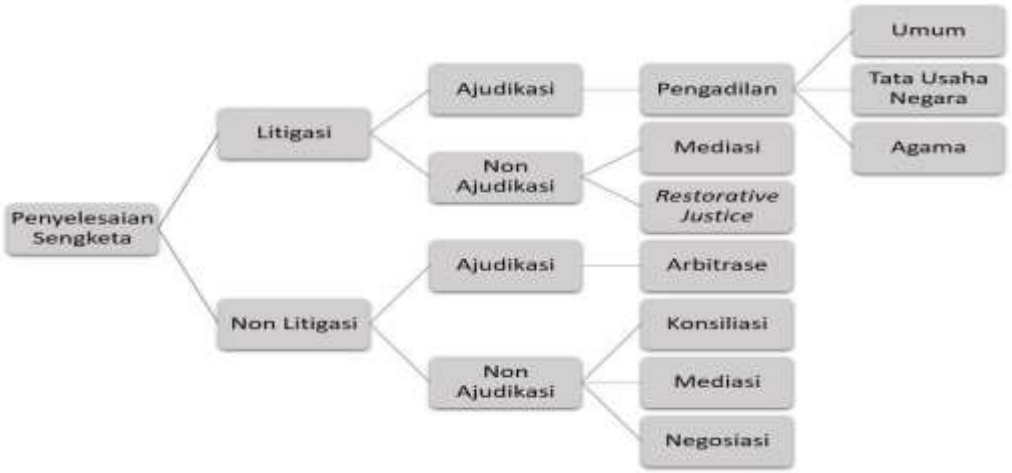


Figure 1. Dispute Resolution Mechanism
Description: Prepared by the Author

2. Civil Legal Remedies under the Consumer Protection Law (UUPK)

   Consumer protection law provides various civil legal remedies for consumers to assert their rights when they are violated by business actors, especially when such violations result in losses. The dispute resolution mechanisms discussed earlier are examples of legal remedies available to consumers.

   The UUPK stipulates that consumers may pursue civil legal action through either litigation or non-litigation, depending on the agreement between the disputing parties. Litigation begins with filing a claim in the general courts in accordance with applicable legal procedures.

   Meanwhile, non-litigation efforts begin by submitting a claim to the Consumer Dispute Settlement Agency (Badan Penyelesaian Sengketa Konsumen – BPSK), which aims to reach an agreement regarding the form and amount of compensation that must be provided by the business actor to the consumer. Dispute resolution mechanisms within BPSK, as regulated by the UUPK, include mediation, arbitration, and conciliation.

3. Consumer Legal Remedies

   Legal remedies available to patients as consumers for losses suffered are guaranteed under the UUPK. The law grants consumers the right to claim civil compensation for damages caused by the negligence of business actors. Article 45 paragraph (1) affirms that consumers

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who suffer losses have the right to file a lawsuit against the business actor.

In the case discussed in this study, legal action may be taken by reporting the incident to supervisory institutions overseeing both business actors and professional workers. However, this step has not yet been taken by the consumer, as the focus has been more on criminal legal action. The enforcement of civil sanctions in this case tends to be administrative in nature, particularly due to the lack of written consent (informed consent) from the consumer.

For civil legal action, consumers may first attempt negotiation with the business actor. If negotiation fails, the consumer may file a claim with BPSK to obtain certainty regarding the form and amount of compensation to be received. If the resolution through BPSK is unsatisfactory, the consumer may bring the case to court to seek more comprehensive justice.

In addition to civil remedies, criminal legal action may also be pursued in accordance with Article 19 paragraph (4) of the UUPK. Criminal proceedings involve reporting both professional workers and business actors to law enforcement authorities for further investigation. The burden of proof in such cases lies with the business actor.

The UUPK also provides that violations of Article 8 paragraph (1) letter (a) may be subject to criminal sanctions, particularly if such violations result in serious injury to consumers. This means that even if the business actor has obtained written consent from the consumer, errors committed by professional workers that cause physical and immaterial harm may still result in criminal liability.

The UUPK emphasizes that criminal liability may be directed not only at the business entity as an institution but also at its management, particularly those who allow negligence by their employees that results in harm to consumers.

CONCLUSION

The responsibility of hospitals as healthcare service providers for losses suffered by consumers can be seen in Article 46 of the Hospital Law, which states that hospitals are legally liable for all losses experienced by patients due to doctor negligence. In the case discussed, the business actor violated several legal provisions, including Article 4 paragraphs (1) and (3) of the Consumer Protection Law, Articles 68 and 84 paragraph (1) of the Health Workers Law, Article 45 of the Medical Practice Law, and Article 37 of the Hospital Law. Based on these regulations, the business actor is obligated to take full responsibility for all losses suffered by the consumer.

Legal remedies available to patients can be categorized into three types: dispute resolution mechanisms, civil legal remedies under the Consumer Protection Law, and consumer legal actions.

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The Consumer Protection Law provides protection for consumers by guaranteeing their right to claim civil compensation for losses caused by the negligence of business actors.

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