

## Research Article

## The Limitations of a Guest Doctor's Liability Due to Negligence in Social Service Activities

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### Abstract

Hospitals try to always meet the community's need for health services, one of which is through social service activities, including free medical treatment, mass circumcision, free cataract surgery, cleft lip surgery, and so on. In these social service activities, doctors are usually given an assignment letter from the hospital institution in the form of an assignment letter or an invitation to take part in these activities, in practice they are often called guest doctors. This study aims to analyze the legal relationship between guest doctors and hospital agencies in the implementation of social service activities, and to analyze the limits of guest doctors' liability in social service activities in hospitals that cause patient losses. This study uses normative legal research methods. The legal relationship between guest doctors and hospitals that carry out social service activities, namely special agreement legal relationships based on work agreements with hospitals, where guest doctors are the parties who perform treatment or provide health services to patients, while hospitals are the parties that provide places and facilities for health services. That this visiting doctor is legally domiciled under the auspices of the hospital. The limits of guest doctor's liability in social service activities at the hospital that cause harm to patients, namely guest doctors with the hospital are proportionally responsible according to the provisions at the hospital based on the agreed work agreement.

**Keywords:** Liability, Guest Doctor, and Social Service.

## INTRODUCTION

Public Health refers to activities organized by the community, as well as public and private sectors, to address issues related to health factors affecting the entire population. To improve the overall health status of the community, many aspects need to be considered, one of which is the role of providing health services.

Health services are efforts carried out either independently or in cooperation within an organization to maintain and improve health, prevent and cure diseases, as well as restore the health of individuals, families, groups, and/or communities. Health services are a societal need, and in this context, hospitals strive to meet this need consistently.

The hospital management, in carrying out its tasks and functions, will inevitably face various challenges. Therefore, hospitals must possess good management to address and overcome these challenges effectively. Furthermore, managing a hospital is different from managing other businesses. Social values, ethics, or social principles must be applied while also considering the economic aspects. The social function of hospitals, as stipulated by the Hospital Law, is to provide health services to the community, not solely to seek profit. This aligns with the fatwa from the Indonesian Honorary Ethics Council of Hospitals (MAKERSI), which includes provisions such as providing emergency services without advance payment, offering services for underprivileged patients, providing free ambulances, serving disaster victims, and conducting social service activities.

Regarding the fatwa on social service activities, many hospitals in Indonesia organize such programs, which may include free medical treatments, mass circumcisions, free cataract surgeries, cleft lip surgeries, and more.

Social service activities require various health professionals, such as doctors, nurses, and pharmacists. In these activities, doctors may be more than one and come from different institutions, collaborating to participate in social service activities. Doctors in these activities are typically assigned task orders or invitations from the hospital institution. In practice, these doctors are often referred to as "guest doctors" or "out doctors," meaning they are non-permanent staff at the hospital.

The hospital's responsibility in Indonesia is regulated by Article 46 of the Hospital Law, which states that hospitals are legally accountable for any losses resulting from negligence by health professionals in the hospital. This regulation implies two meanings. First, hospitals are only accountable for negligence and not intentional wrongdoing. Second, the negligence must occur while or in the course of performing tasks assigned by the hospital.

The hospital's responsibility is further emphasized in Article 32, letter (q) of the Hospital Law, which states that every patient has the right to sue or file claims against the hospital if the services provided do not meet the standards, whether criminally or civilly. Therefore, it is essential to understand the legal aspects of social service activities, especially regarding the permits required to conduct these activities. Social service activities require approval from the Ministry of Health for document verification through a request to the health department, which can then issue a permit to organize the activity.

Article 28 paragraph (1) of the Minister of Health Regulation No. 2052 of 2011 on Medical Practice Licenses states that social work or activities by a doctor who already holds an SIP (Medical Practice License) in the same district/city can be carried out by notifying the local Health Department Head.

Article 7 of the Minister of Health Regulation No. 2052 of 2011 states that doctors with SIP who provide medical services or consultations for social/humanitarian work do not need an SIP at the location. The medical service must be notified to the local Health Department Head, and this notification can be done by the organizing institution.

A social problem arises when a social service event involves many doctors and guest doctors (out doctors) from various institutions. In this case, who will be responsible from the legal, civil, administrative, ethical, and disciplinary aspects?

### **Problem Formulation**

Based on the description above, the problem formulation can be outlined as follows:

1. The legal relationship between guest doctors and the hospital organizing social service activities.
2. The limitations of guest doctors' liability in social service activities at hospitals that result in harm to patients.

### **METHOD**

This writing uses a normative legal research method, which involves using legal materials in the form of regulations and opinions or doctrines from legal experts in the fields of civil law and health law. The approaches used in this research are the statute approach and the conceptual approach.

## **RESULT AND DISCUSSION**

### **Result**

#### **1. Legal Relationship Between Guest Doctors and Hospitals**

##### **a. Concept of Legal Relationship in Healthcare Services**

The increasing role of law in healthcare services is driven by the growing demand for health services from society. Medicine, in addition, often needs to be associated with the business interests of the authorities in order to control individuals, such as the need for a doctor's assistance to help a victim of harm (criminal cases). In such cases, the establishment of medical professional ethics codes may not always prevent inhumane acts. Similarly, in other cases, such as experiments involving humans, the actions of doctors are not always aimed solely at the patient's benefit.

Such phenomena have led people to search for legal foundations for healthcare services. Furthermore, the actions performed by healthcare providers are also legal acts that result in the creation of legal relationships, even though these relationships are often not acknowledged by healthcare providers at the time of performing the actions. Healthcare

services encompass professional activities in the fields of promotive, preventive, curative, rehabilitative, and traditional healthcare, intended for individual interests, but also including the service institutions, their management systems, preventive actions, educational efforts, financing, and organization.

However, in this context, we focus on understanding the emergence of legal relationships in individual healthcare services, referred to as medical services, the legal standing of the parties involved in medical services, the legal basis for medical service relationships, and the risks involved in medical services.

The emergence of legal relationships in medical services can be understood by knowing and understanding the following:

- **Definition of Healthcare Services**

Healthcare services are efforts made to improve the health of individuals, groups, or society as a whole. According to Lavey and Loomba, as cited by Azrul Azwar, healthcare services are efforts organized independently or in collaboration within an organization to improve and maintain health, treat diseases, prevent diseases, and restore health, aimed at individuals, groups, or society.

- **Principles of Assistance in Medical Services**

The concept of "zelfhulp" or self-help, which refers to helping oneself or assisting others, is recognized in healthcare services. Although self-help does not always require professional help, expertise from professionals is often necessary, and their assistance is considered a form of specialized support. In a legal context, the right to receive professional assistance is synonymous with the right to receive adequate medical care, based on professionalism.

- **Purpose of Providing Assistance in Medical Services**

The purpose of providing medical assistance is to restore individuals to their previous state and expand their ability to manage themselves as best as possible. Assistance in medical services should only be given when necessary and must not exceed what is needed to help the individual manage their own health. If this assistance contradicts the goal of self-management, it would be inconsistent with the purpose of professional assistance.

## **b. Legal Relationship Between Hospitals and Doctors**

Article 1, paragraph (1) of the Medical Practice Law defines: "Medical practice is a series of activities carried out by doctors and dentists in providing health services to patients." Further, Article 1, paragraph (9) defines: "Healthcare facilities are places where health services are provided and can be used for medical or dental practice." The legal relationship between doctors and hospitals is not clearly regulated in the Medical Practice Law.

Doctors who hold a practice license must display their practice information. If a doctor practices at a healthcare facility such as a hospital or clinic, the facility's management must provide a list of doctors practicing there (see: Article 41 of the Medical Practice Law). Additionally, the management is prohibited from allowing doctors who do not meet the necessary licensing requirements to practice at the healthcare facility (see: Article 42 of the Medical Practice Law).

The legal relationship between hospitals and doctors is not explicitly regulated in the Medical Practice Law, but Articles 41 and 42 suggest that the hospital, as a healthcare facility, provides the location for doctors to perform health services. Therefore, the relationship between the hospital and the doctor is a working relationship, where the hospital provides the place for doctors to conduct medical practice, and the doctor provides healthcare services at the hospital or healthcare facility.

Each of these working relationships determines whether the hospital is liable for any damages caused by the doctor's negligence and the extent of its responsibility. The hospital's social function, aligned with the right to receive medical services, must be fulfilled by providing quality care, both geographically and financially. Likewise, the working relationship between hospitals and doctors needs further regulation to ensure that hospital services are of high quality and provide protection for patients, particularly in the context of assigning responsibilities between the hospital and the doctor when legal issues arise.

### **c. Contractual Relationship Between Guest Doctors and Hospitals**

Various types of professions related to the medical field are gathered in hospitals, including specialists, doctors, dentists, pharmacists, nurses, midwives, and others, all of whom work in the field of healthcare and have a working relationship with the hospital to carry out their professional duties.

The execution of such work involves health professionals at healthcare institutions in accordance with their knowledge, skills, and authority. According to Article 1, paragraph (1) of Law No. 36 of 2014 on Health Workers, a health worker is defined as someone who dedicates themselves to the health sector and possesses knowledge and/or skills obtained through education in healthcare, with specific authority required for certain health interventions.

Article 62 of Law No. 36 of 2014 regulates the implementation of medical actions by health workers, focusing on the skills and authority they possess. Health workers with various levels of education have professional authority according to their competencies and areas of expertise. Further regulations on professional authority are provided by Ministerial Regulations.

Unlike the general health workers mentioned above, a guest doctor or independent contractor works independently, not for or on behalf of the hospital, and is not bound by the hospital's rules or working hours. Guest doctors do not fall under the hospital's supervision and control.

Any agreement made lawfully serves as a binding contract for the parties involved (Article 1338 of the Civil Code), which in this case concerns the agreement between the hospital and the guest doctor. Typically, a special agreement is made between a hospital and a guest doctor, regulated by Article 1340 of the Civil Code, which states that contracts are only binding on the parties that make them, in this case, the hospital and the guest doctor.

According to Article 1367 of the Civil Code: “A person is not only responsible for damages caused by their own actions but also for damages caused by people under their responsibility or by goods under their supervision.” Therefore, the position of a permanent doctor and a guest doctor differs in terms of their actions and responsibilities. A permanent doctor works under a contract with the hospital, and their position is one of employer and employee, with oversight by a superior. In contrast, a guest doctor works independently and does not have the same level of supervision or responsibility to the hospital.

#### **d. Legal Relationship Between Doctors and Patients**

In Chapter II of the Medical Practice Law, Article 2 states: “Medical practice is carried out based on the principles of Pancasila and is grounded in scientific values, benefits, justice, humanity, balance, as well as patient protection and safety.” This law emphasizes that medical practice is based on scientific values, meaning that medical practices must be based on knowledge and technology acquired through education, continuous learning, experience, and professional ethics.

The term "scientific values" suggests that every doctor must meet specific requirements when performing their profession. As a professional, a doctor must undergo higher education and continuous training and hold a monopoly over the knowledge in their field. Moreover, the latter part of Article 2—“...protection and safety of patients”—indicates that patients must be provided with protection, both physically and emotionally. This reflects the high ethical standards of a professional doctor, as evidenced by an oath doctors take, such as the one stated in Article 10 of the Medical Ethics Code: “Every doctor must always remember their duty to protect human life.”

Many scholars have researched the relationship between doctors and patients, both from a medical and sociological/anthropological perspective. One study by Russel and colleagues revealed that the relationship between doctors and patients is one of power, where one party (the doctor) holds authority while the other (the patient) is passive and dependent. However, an ideal relationship can be developed where both parties actively participate and influence each other. This means that the relationship between a patient and a general practitioner is more balanced than that with a specialist. Furthermore, research by Kisch and Reeder on the doctor-patient relationship examined how much control patients could have in managing the relationship and how they assessed the doctor's performance and the quality of medical services.

In summary, the studies highlight that the behavior and culture of different groups influence how patients experience medical services. For general practitioners, patients can easily choose who they want to see, as general practitioners are highly dependent on patient preferences. Communication failures and unfriendly attitudes can lead patients to seek another doctor. However, in specialist practices, patients tend to be more dependent on the doctor due to the specialist's expertise, seniority, and experience, which makes patients believe the specialist is better suited to treat their condition.

The relationship between doctors and patients has traditionally been understood as paternalistic and imbalanced, with doctors in a dominant role. In the modern approach, the doctor-patient relationship is seen as contractual and equal, placing both parties in a balanced position. Patients have the right to accept or reject the doctor's actions, and they must be given full, accurate information about their health. Meanwhile, doctors are obligated to respect the patients' rights and provide truthful information about their condition.

## **e. Legal Basis for Social Service Activities**

Social service activities are expressions of humanitarian efforts among individuals. These activities aim to foster a sense of mutual help, compassion, and care, especially for those in need. While the legal framework for organizing social service activities is not explicitly regulated in Indonesia, the Constitution and the 1945 Indonesian Constitution mandate the state's responsibility to protect and ensure the welfare of its people.

According to Article 1 of Law No. 11 of 2009 on Social Welfare, social welfare is defined as the fulfillment of material, spiritual, and social needs of citizens so that they can live a dignified life and develop themselves to perform their social functions. Social welfare services are carried out in a coordinated, integrated, and sustainable manner by the government, local authorities, and society.

Although there is no specific regulation for social service activities in health, the role of the medical profession, including doctors, is recognized in providing healthcare through social service activities. According to Article 28, paragraph (1) of Minister of Health Regulation No. 2052 of 2011, doctors with a valid practice license who engage in social activities within the same district/city must inform the local Health Department. Further, Article 7 of the same regulation states that doctors offering medical services as part of a social activity do not need an additional practice license in the location of the service, but the activity must be reported to the local Health Department.

Based on these provisions, both hospital doctors and guest doctors, individually or as part of a professional medical organization, are permitted to carry out social service activities related to healthcare for the community.

## **Discussion**

### **Liability of Guest Doctors in Social Service Activities at Hospitals Leading to Patient Harm**

#### **a. Rights and Obligations of Patients**

From a sociological aspect, both patients and healthcare providers play certain roles in society. Doctors, as providers of healthcare services, are often seen as knowledgeable and authoritative by patients, creating a relationship where the patient is the recipient of healthcare services. This paternalistic relationship is associated with a vertical hierarchy, where the healthcare provider knows everything about the disease, while the patient knows little about their condition or how to treat it. In this relationship, the patient completely entrusts their fate to the healthcare provider.

Regarding patient rights in healthcare, they generally include the following:

1. Right to medical information
2. Right to provide consent for medical procedures
3. Right to choose their doctor or hospital
4. Right to confidentiality of medical records

5. Right to refuse treatment or medical procedures
6. Right to a second opinion
7. Right to access medical records

Alongside these rights, patients also have obligations, both moral and legal. Morally, patients are obligated to maintain their health and follow the doctor's care instructions. Legally, the patient's obligations in healthcare include:

1. Duty to provide medical information
2. Duty to follow the doctor's advice and instructions
3. Duty to adhere to the rules of the healthcare facility
4. Duty to compensate the doctor for their services
5. Duty to be truthful
6. Duty to maintain the confidentiality of the doctor's personal information.

#### b. Rights and Obligations of Doctors

The relationship between a doctor and a patient is unique, encompassing legal, non-legal, medical, social, and economic aspects. The existence of a legal relationship between the doctor and the patient creates certain rights and obligations for both parties.

Based on the therapeutic agreement, doctors have both rights and obligations as professionals. The rights of a doctor include:

1. The right to refuse to work outside the Medical Professional Standards (SPM)
2. The right to refuse actions that contradict the Medical Ethics Code
3. The right to choose patients and terminate the professional relationship
4. The right to privacy
5. The right to fair compensation
6. The right to refuse to testify about a patient in court

Doctors' obligations include:

1. Obligation to work according to the Medical Professional Standards (SPM)
2. Obligation to inform the patient about medical procedures
3. Obligation to maintain the confidentiality of medical records
4. Obligation to assist patients in emergency situations.

#### c. Rights and Obligations of Hospitals

In the legal relationship between a hospital and its patients regarding medical services, hospitals have specific rights and obligations. These rights are outlined in Article 30, paragraph (1) of Law No. 44 of 2009 on Hospitals, as follows:

- a. Right to determine the type, quantity, and qualifications of human resources according to the hospital's classification.
- b. Right to receive compensation for services provided and to determine incentives, remuneration, and rewards in accordance with the applicable regulations.

- c. Right to cooperate with other parties to develop services.
- d. Right to receive assistance from other parties in accordance with legal regulations.
- e. Right to file lawsuits or claims against other parties who cause harm.
- f. Right to legal protection while providing healthcare services.
- g. Right to promote healthcare services in the hospital according to legal regulations.
- h. Right to receive tax incentives for public hospitals and those designated as teaching hospitals.

Hospitals also have specific obligations, including:

a. General obligations of hospitals:

- Hospitals must adhere to the Indonesian Hospital Ethics Code (KODERSI).
- Hospitals are responsible for monitoring all incidents within the hospital.
- Hospitals must prioritize quality healthcare services and not prioritize costs.
- Hospitals must maintain both medical and non-medical records securely, protecting patient confidentiality.
- Hospitals must keep up with developments in healthcare practices.

b. Obligations of hospitals towards society:

- Hospitals must be honest and transparent, sensitive to public feedback, and ensure their services reach beyond the hospital.
- Hospitals must adapt their services to meet the expectations and needs of the local community.

c. Obligations of hospitals towards patients:

- Hospitals must respect patients' basic human rights, including the right to quality healthcare and nursing care according to professional standards.
- Hospitals must provide information about the patient's condition and the proposed medical actions.
- Hospitals must obtain the patient's informed consent before performing certain medical procedures.

d. Obligations of hospitals towards staff and employees:

- Hospitals must ensure that leadership, staff, and employees comply with their respective professional ethics.
- Hospitals must foster a managerial climate conducive to staff education and training.
- Hospitals must select medical staff based on appropriate values, norms, and standards.
- Hospitals must ensure effective coordination and communication among all staff members.
- Hospitals must provide opportunities for staff to enhance their knowledge and skills.

#### d. Determining Liability of Doctors and Hospitals to Patients

In recent years, legal claims against doctors for malpractice have been increasing, reflecting greater public awareness of patients' rights. Doctors are expected to carry out their professional duties with greater care and responsibility.

A doctor is expected to diagnose correctly, follow the appropriate procedures, provide therapeutic care, and carry out medical procedures according to medical service standards. In medical ethics law, medical malpractice refers to a doctor's failure to apply the level of skill, knowledge, and expertise commonly used in their practice.

To sue a doctor for an unlawful act, the patient must show that the doctor's negligence in performing their professional duties resulted in harm to the patient.

Medical liability is not limited to the doctor alone; it also involves the hospital, which shares responsibility for the negligence of its medical staff. According to Article 46 of the Hospital Law, hospitals are legally responsible for all damages caused by negligence by healthcare providers within the hospital. Furthermore, Article 1367, paragraph (3) of the Civil Code states that employers are responsible for the actions of their employees during their duties.

A doctor working for a hospital is bound by an employment contract, making the hospital liable for the doctor's actions. However, if the doctor practices independently, the hospital has no obligation to assume responsibility for the doctor's actions.

Therefore, in cases of negligence leading to harm during social service activities at hospitals involving guest doctors, the liability rests with both the guest doctor and the hospital. Both parties are jointly liable, with responsibility divided according to hospital regulations. This is particularly relevant in cases of medical disputes arising from negligence by guest doctors during social service activities that cause patient harm.

To determine the scope of liability between guest doctors and hospitals regarding risks from negligence in healthcare services, it is important that a clear contractual agreement is established between the hospital and guest doctors, specifying the division of responsibilities, including in cases of malpractice or medical disputes.

#### e. Application of the Proportionality Principle in Hospital Internal Regulations for Resolving Medical Disputes

The application of the proportionality principle is essential for optimizing the objectives of therapeutic agreements. This principle aims to balance the interests of the parties involved in a contractual relationship. The proportionality principle ensures that rights and obligations are distributed fairly and appropriately among the parties involved.

According to Agus Yudha Hernoko, the term “proportionality” refers to a balance, where rights and obligations are distributed in a manner that is fair and equitable. This principle does not focus on achieving identical outcomes, but rather on ensuring that the distribution of rights and obligations is fair and reasonable.

The proportionality principle serves several functions in contract law:

1. During the pre-contract phase, it opens up negotiation opportunities for both parties to exchange rights and obligations fairly.
2. During the contract formation phase, it ensures that the distribution of rights and obligations is agreed upon in a balanced manner.
3. During contract execution, it ensures that the exchange of rights and obligations occurs according to the agreed proportions.
4. If a contract fails, the principle helps assess whether the failure is fundamental.
5. In case of contract disputes, the principle ensures that the burden of proof is shared fairly.

In resolving medical disputes between patients and doctors or hospitals, the application of the proportionality principle in hospital internal regulations can be seen in the contract between the parties, ensuring that the division of responsibilities is clear and equitable.

#### f. Alternative Dispute Resolution (ADR)

Medical disputes are conflicts arising from the legal relationship between doctors and patients during medical treatment. Often, medical disputes stem from misunderstandings between patients and healthcare providers. The term "medical dispute" is more appropriate than "malpractice" in such cases, as many doctors act out of humanitarian motives.

To resolve medical disputes, a decision must be made based on both legal and medical considerations, determining whether the dispute constitutes malpractice. According to Article 29 of the Health Law, mediation is recommended as the primary method of resolving medical disputes, as it allows both parties to express their issues and decide on a resolution.

Alternative Dispute Resolution (ADR) is commonly used in medical disputes, providing non-litigation options. The growing preference for ADR is due to the frustrations with lengthy court processes. The types of ADR include:

- a. Negotiation – A bargaining process aimed at reaching a mutual agreement between two parties.
- b. Mediation – A process where a neutral mediator helps the parties reach a solution without imposing a decision.
- c. Conciliation – A process where a third party helps resolve the dispute, with more direct involvement than mediation.
- d. Arbitration – A process where a neutral arbitrator makes a binding decision to resolve the dispute.

In the event of a medical dispute between a patient and a doctor or hospital,

ADR methods like negotiation, mediation, conciliation, and arbitration offer effective alternatives for dispute resolution.

## CONCLUSION

1. The legal relationship between a guest doctor and the hospital organizing social service activities is a special contractual relationship (*bijzondere overeenkomst*) based on an employment agreement with the hospital, where the guest doctor is the party providing treatment or healthcare services to the patient, while the hospital is the party providing the place and healthcare facilities. Legally, the guest doctor is under the authority of the hospital.
2. The limits of liability for the guest doctor in social service activities at the hospital, which result in harm to the patient, mean that the guest doctor and the hospital are jointly liable in a proportional manner according to the hospital's regulations. This occurs if there is a medical dispute due to errors or negligence committed by the guest doctor during social service activities that cause harm to the patient. The joint liability between the guest doctor and the hospital arises because the guest doctor is a partner based on the mutually agreed-upon employment contract.

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