

# Responsibilities of Type A Mental Hospitals for Escaped-Psychiatric Patients During the COVID-19 Pandemic

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This study aims to determine the form of responsibility for a mental hospital type A if a patient with a mental disorder (psychiatric patient) escaped from the hospital during the COVID-19 pandemic. Outpatients and inpatients with a mental disorder can escape from the hospital because they have disturbed-awareness. The pandemic conditions of the COVID-19 pandemic are hazardous to contract both patients and doctors, and health workers. There are some problems related to the burden of responsibility to the hospital or inpatient staff to psychiatric patients who escape from the hospital. The study concludes that the responsibility for psychiatric patients who escaped from the hospital includes three parties: the head of the hospital, the attending physician, and the health workers such as nurses.

**Keywords:** COVID-19, Type A Mental Hospital, Indonesia, People With Mental Disorders, Responsibility, Doctors.

## Introduction

Since it was first announced in December 2019, the number of Corona Virus Disease (COVID-19) patients has increased. This disease originally occurred in Wuhan, Hubei Province, China. In one month, the cases got a significant increase. They spread to several provinces in China.<sup>1</sup>The rapid spread of the disease has reached several countries and led to the World Health Organization (WHO) finally announcing COVID-19 as a pandemic on March 12, 2020<sup>2</sup>. Based on the WHO report on April 6, 2020, COVID-19 positive cases have reached 1,210,956 people in 205 countries with a death rate of 5.6%<sup>3</sup>. The Ministry of Health of the Republic of Indonesia first reported cases on March 2, 2020, starting with two cases in West Java. As of 7 April 2020, COVID-19 positive cases reached 2,738 people with a death rate of 8.1%<sup>4</sup>. Along with the rapid

development of this disease, various problems began to emerge. The developed problem is a matter of how the availability of hospital resources then causes limitations in providing services and how the hospital maintains its health workers' mental<sup>5,6</sup>.The existence of a new disease outbreak, which then spreads and then declared a pandemic by WHO, cause anxiety and fear in public. This fear occurs because of the community's lack of understanding<sup>7</sup>.

Implementation of Article 24 of Act No. 44 the Year 2009 on Hospitals, it is necessary to regulate hospitals' classification with a regulation of the minister of health. In *Permenkes* No. 340 the Year 2010, Article 1 states a Special Hospital is a hospital that provides primary services in one particular field or disease, based on scientific discipline, age group, organ, or type of disease<sup>8</sup>. Article 25 in *Permenkes* No. 340 the Year 2010, Special Hospital is determined based on services, human resources, equipment, infrastructure, and management administration. The classification of service elements referred to in Article 24 includes general medical services, emergency services according to their specificity, basic specialist medical services, medical support specialist services, other specialist

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medical services, nursing services, clinical support services, and non-clinical support services. The minister of health stipulated the provincial government to provide guidance and supervision for special hospitals in the province<sup>9</sup>. Based on data from the Association of Psychiatric Doctors, in Indonesia, there are still six provinces without having mental hospitals, and the number of Mental Specialists Doctor is 987 and they are centered in Java and accumulate in Jakarta<sup>10</sup>. Currently, the number of people with mental disorders globally is around 450 million, including schizophrenia. Several types of mental disorders experienced by Indonesians are depression, anxiety, schizophrenia, bipolar disorder, behavioral disorders, and autism. Depression ranked first in three decades. All groups of age can experience this disorder. The results of the 2018 *Riskesdas* showed that depression began to occur in the teenage age range (15-24 years) with a prevalence of 6.2%. Where its prevalence pattern increases in line with ages, the highest is at the age of more than 75 years (8.9%), 65-74 years (8.0%), and 55-65 years (6.5%)<sup>11</sup>.

## Discussion

### Mental Hospital

*Permenkes* No. 56 the Year 2014 on hospital classification and licensing in article 1 point 3 regulate special hospital in which it only provides main services in one area or one type of disease<sup>12,13</sup>.

According to *Permenkes* No. 340/MENKES/PER/III/2010 on hospital classifications. The standards contained in a class A mental hospital must have health services for the development of children and adolescents, adult mental health services, elderly mental health services, organic mental disorders services, psychology and psychometrics, drug dependence services, community mental health services, counseling and psychotherapy services, mental rehabilitation services, medical rehabilitation services, neurologist services, radiology specialist services, pediatric services, anesthesiologist services, laboratory services, disease specialist services In, Emergency Services, Public Health Services, Dental Health Services, Inpatient Services, and Intensive Care Services.

In terms of workers and staff, medical workers include Mental Medicine Specialists, Mental Medicine Subspecialists, Neuroscientists, Radiology Specialists, Pediatricians, Anesthesia Specialists, Clinical Pathologists, Internal Medicine Specialists, Medical Rehab Specialists, Doctors General, and Dentist.

In terms of nursing, it consists of Inpatient Nursing, Intensive Room Nursing, Emergency Room Nursing (per shift), and Outpatient Nursing. It also must cover other health workers such as Pharmacists, Clinical Psychologists, Social Workers, SKM, SMF / SAA, Associate Nutritionist / SPAG, Associate Environmental Health Specialist, Associate Medical Record Expert, Associate Physiotherapist, Associate Health Analyst (AAK), Anesthesia Nurse, Specialist Associate Radiographer, Associate Electromedical Expert, Radiation Protection Officer (PPR).<sup>9</sup>

### The function of Mental Hospital

Mental hospitals have efforts aimed to provide specific mental health services for people with mental disorders, eliminate stigma, discrimination, violations of human rights of people with mental disorders as part of society, prevent mental problems, and reduce risk factors due to mental disorders in society in general or individuals, and provide healing and recovery for people with mental disorders. It also gives opportunities for people with mental disorders to obtain their rights as Indonesian citizens. In Act No.36, the Year 2009 on Health, it has regulated matters related to health workers' negligence in Article 29 and Article 58.

According to article 29, a health worker is suspected of negligence in carrying out his profession; mediation becomes the first option to resolve it. Article 58 regulates every person's right to claim compensation for a person, health worker, and/or health provider who causes losses due to errors or negligence in the health services they receive<sup>14</sup>. Therefore, prosecution for compensation could be due to both mistakes in health services and deliberate health services actions. The prosecution is aimed at a person, health worker, or the health provider (hospital).

Prosecution for damages, based on Article 46 of Act No. 44 the Year 2009 on Hospitals, is only directed

at the Hospital, specifically caused due to negligence of health workers at the Hospital. This can be interpreted as a deliberate loss caused by health workers in the hospital. Then prosecution can not be carried out against the hospital because it is caused by deliberate mistakes of health workers at the hospital. The empirical phenomenon and juridical exposure to the dynamics of medical disputes concerning a Mental Hospital's existence become more complicated when necessary to carry out legal responsibility for existing disputes. The details such as who the legal subject is, what the legal object is, and many others need to be more thoroughly identified, including the legal position of the hospital as an institution as a health service provider with the health worker concerned and how the legal relationship has a role among the service provider, in this case, it is hospital.

### **Coronavirus Disease (COVID-19)**

Coronavirus is a family of viruses that cause illness ranging from mild to severe symptoms. Two known viruses caused severe symptoms, such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). Coronavirus 2019 (COVID-19) is a new type of disease newly identified in humans. The virus caused COVID-19 is called SARS COV-2. Coronavirus is zoonotic (transmitted between animals and humans). Research states that SARS is transmitted from civet cats to humans and MERS from camels to humans, while the COVID-19 transmission source is still unknown.

Common signs and symptoms of COVID-19 include acute respiratory distress symptoms such as fever, cough, and shortness of breath. The average incubation period is five to six days, with the longest incubation period being fourteen days. Severe cases of COVID-19 can cause pneumonia, acute respiratory syndrome, kidney failure, and even death. In some cases, the clinical signs reported in most cases are fever, some difficulty breathing, and X-rays show large pneumonia infiltrate in both lungs<sup>15</sup>. Coronavirus is sensitive to heat and can be effectively deactivated by a disinfectant containing chlorine, a lipid solvent with a 56 ° C temperature for 30 minutes<sup>16</sup>.

### **People with Mental Disorder (ODGJ)**

Mental disorders are changes in a person's attitude and behavior, where people with mental disorders usually do not realize that their behavior is deviant, cannot control themselves. If the lack of self-control is very conspicuous, then someone can be identified to have mental disorders. Hereinafter referred to as *ODGJ*, people with mental disorders are different from People with Mental Problems, hereinafter referred to as *ODMK*. Then "Who can be called *ODMK*?" The simple answer is everyone who has the vulnerability to become *ODGJ* and who can also be called *ODGJ*? The answer is everyone who has received a mental disorder diagnosis from a psychologist or psychiatrist.

*ODGJ* and *ODMK* are both born from Acts; It is Act No. 18 the Year 2014 on Mental Health, which in Article 1 states that People with Psychiatric Problems are: "... people who have a problem in physical, mental, social, growth and development, and/or quality of life so that they are risking of experiencing mental disorders. "Meanwhile, in the same article, People with Mental Disorders are:" ... people who experience disturbances in thoughts, behavior, and feelings that manifest in the form of a series of symptoms and/or changes in behavior that are meaningful, and can cause suffering and obstacles in carrying out people's functions as humans"<sup>17,18</sup>.

### **Escaped-Psychiatric Patient**

Mental Hospital (*RSJ*) is a place where people with mental disorders are treated specifically, either outpatient or inpatient. Patients with mental disorders who have been treated for a long time may also feel bored and want to go home. Since the treatment is still in progress, they are not allowed to go out of hospitals. In some cases, the patient decides to go home without any permission, or to some extent, they commit to escape from the hospital. The terminology of "escape" in Indonesia Dictionary means *menyelamatkan* (to save). Regarding the psychiatric patient in the hospital, escaped-patients are patients who leave/go home from the hospital before other professional doctors allow them to go home. There is no permit from the hospital<sup>19</sup>.

## Responsibility

Responsibility is the consequences of a person's freedom on his actions related to ethics or morals in doing an action<sup>20</sup>. Legal responsibility is divided into criminal and civil responsibility. It should have a basis to give legal rights for one person to sue another and simultaneously in the form of things resulted in someone else's legal obligation to give his responsibility<sup>21</sup>. The public responsibility of the hospital as a public service provider is regulated in Article 15 Act No. 25 the Year 2009 on public services, which is regulating public service implementation objectives. Apart from that, it is also regulated in the provisions of Article 46 of Act No. 44 the Year 2009 on hospitals, which stipulate that the hospital is legally responsible for all losses caused by negligence committed by health workers in the hospital.<sup>22</sup> Broadly speaking, based on the perspective of the perpetrator, legal subjects of responsibility in the hospital divided into three forms, it is 1. Responsibility for the hospital, the person in charge, is the Head of the Hospital. 2. The responsibility of the medical service, the person in charge, is doctors. 3. Responsibility for nursing, the person in charge, is nurses.

The legal position of mental hospitals to carry out mental health service, as a legal subject, has rights and obligations to take legal actions such as making decisions, acting inside and outside of the court. In carrying out the function of health services to the patients, the hospital involves several health workers. Doctors, patients, and hospitals are the three legal subjects involved in health care. The three of them then create both a medical relationship and a legal relationship. The medical and legal relations between doctors, patients, and hospitals are the ones whose object is health in general and health services in particular. But in practice, it is not that easy and that simple. It is since the three groups of responsibilities are interrelated and interconnected with one another. So it is often a bit difficult to measure to sort out and provide strict limits of responsibility. To find out who is asked to be responsible, all the aspects must be seen casuistically because it depends on many factors, such as 1. The setting of situation and condition; 2. Pre-existing condition of the patients; 3. Shreds of evidence (medical record, witnesses); 4. Whether it has been done

based on "medical professional standards"; 5. Whether there are no errors in judgment (error of judgment); 6. Whether there has been a delegation of authority and whether the delegation can be justified in that case; 7. Whether there is no negligence element (negligence) or the possibility of an element of intent; 8. Suppose there is an element of neglect: who is negligent; 9. Whether there is no fault in the patient himself because; a) Not telling all the circumstances of himself honestly; b) Not according to the doctor's advice and violating the doctor's/hospital's restrictions so that the situation gets worse. 10. The lawsuit filed can be in the form of criminal, civil, and administrative. It is also necessary to think about the extent of the legal impact (risk) on hospital management. Who is legally responsible in the hospital if there is a lawsuit, doctors, nurses, the hospital itself, and how much the compensation will be.

The responsibility on the perspective of the hospital includes three things; it is; 1. Personal-related responsibility; 2. Facility-related responsibility; 3. Responsibilities related to the duty of care (obligation to provide good care). To obtain certainty of legal responsibility for hospitals and duty officers for psychiatric patients who escape from inpatient rooms, it depends on the hospital's internal regulations (hospital by-laws), whether these regulations have covered rules relating to health services, workforce, administration, and management. In general, the hospital as an organizational unit or legal entity is responsible for its employees' actions in giving health services. This includes what is in the science of law called vicarious liability or an employer's responsibility for his employees' actions or mistakes. The hospital's responsibility to personnel is based on the employer-employee relationship (Vicarious Liability Doctrine; Respondeat Superior Doctrine; Master-Servant Relationship Doctrine; and "Let the Master Answer" Doctrine) found in the legal literature. An employer-employee relationship means an employer is responsible for an action/non-action (negligence) of his employee, which results in the loss of another party. In Indonesia, it is regulated in the Code of Civil Law articles 1367, 1366, and 1365. If there is a working relationship between the employer and the employee, the employee receives a salary and carries out instructions from his / her boss (hospital), then this

does not cause any difficulties. According to civil law, an employer can be held liable if it causes loss or injury to a patient due to his employees' actions. There must be an action against the law that resulted in some losses; among others, the action and losses must have a direct relationship. An error is when the perpetrator has gaps or negligence (negligence). Actions against the law do not only consist of one action but also in the state of "not doing something." The Civil Code also stipulates that each person is responsible for losses caused by his own actions and for losses caused by the actions of the people he is responsible for, or for goods under his control<sup>23</sup>.

Comparing the provisions of Article 46 of Act No. 44 the Year 2009 on Hospitals with Article 1367 of the Civil Code paragraph (3), it can be concluded that Article 46 of Act No. 44 the Year 2009 on Hospitals is a derivative of Article 1367 of the Civil Code paragraph (3) which applies specifically to hospitals, or Article 46 of Act No. 44 the Year 2009 is a *lex specialis*.<sup>24</sup> The provisions of the Article above are also in line with the provisions of the respondeat superior doctrine. The respondeat superior doctrine implies that an employer is a person who has the right to give instructions and control the actions of his subordinates, both on the results achieved and, on the methods used.

### Conclusion

Legal entities as subject to responsibility in the hospital are grouped into three; the hospital's Head becomes responsible in the hospital. In medical service, doctors will have the responsibility, while the nurses are responsible for nursing services. The hospital is responsible for psychiatric patients who escape from the inpatient room, which harm to a person/patient based on a. juridically normative, this is the application of the provisions of Article 1367 of the Civil Code, and Article 46 of the Hospital Acts, and accreditation of health services; b. juridically doctrinally, the hospital is responsible for the actions of psychiatric patients who escape from the inpatient room with the respondeat superior doctrine, and the hospital is responsible for the quality of care (duty to care); and c. In theoretical juridical terms, the hospital as a corporation then applies vicarious liability, hospital liability, and corporate liability. The hospital can be held accountable for

psychiatric patients who escape from the inpatient room, which functions as a sub-ordinate (employee).

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