

Legal Certainty of Hospital Service Operations During Pandemic Corona Virus Disease 2019

Brilian TitaPutri¹, Cinderella A.N Rieuwpassa¹, Gede Angga Dharmadiputra¹, R. HardadiAirlangga¹, Mokhamad Khoirul Huda²

¹Master of Law Student, ²Professor, Faculty of Law, Hang Tuah University, Surabaya, Indonesia

Abstract

Hospital is health service institution that provides complete individual health services that provide inpatient, outpatient, and emergency services. In operating services the hospital is required to have permit. Permit is granted if it meets the requirements and standards to ensure the safety of patients, hospitals and health workers. The quality of hospital services is tested through the accreditation process, it could not be done during pandemic. Therefore, many policies have been issued, including the Circular of Health Minister No. HK.02.01/MENKES/455/2020 Year 2020. This circular facilitates the permit extension but does not give detail about how to maintain the hospital quality and services. During pandemic, the surge in Covid patients is not comparable to the hospital capabilities that are different such as in the human resources and the facilities and infrastructure. Many hospitals are full because they have to treat Corona Virus Disease 2019 patients, a lot of equipment, rooms and beds must be added, but the health workers that work are limited so that health workers have to work extra to serve patients that increase every day. This situation can cause physical and mental fatigue which over time has impact on health services so that negligence can occur. So hospitals need to make protection standards for health workers in addition to legal responsibility for losses caused by health workers according to article 46 of the Hospital Law.

Keywords: hospital, Licensing, Health Workers, Covid-19

Introduction

Services of hospital as institution in the health sector during Corona Virus Disease 2019 (COVID-19) pandemic are still quite difficult. There are still many hospital functions and tasks that have not been carried

out optimally yet, including arrangement of separate entry flow for Covid-19 patients, providing negative pressure rooms, providing facilities and infrastructure such as adding rooms for Covid-19 patient services, laboratory support facilities and PPE for health workers. Pandemic impacts do not show improving indicators nationally where the number of COVID-19 patients until March 27, 2021 totals 1,492,022 people and the data of patients who died after being exposed to COVID-19 from March 26-27 were 198 patients. Thus, the death toll from Covid-19 has reached 40,364 people since the beginning of the pandemic ¹.

Corresponding Author:

Dr. Mokhamad Khoirul Huda

Professor, Insurance Law, University of Hang Tuah
Surabaya, Indonesia

Contact : Tel +6281357437000

E-Mail: emka.huda@hangtuah.ac.id

Hospital is health service institution that provides complete individual health services that provide inpatient, outpatient, and emergency services. Regulations regarding hospitals are regulated in Law No. 44 of 2009 concerning Hospitals (hereinafter referred to as the Hospital Law)². Prior to the existence of Hospital Law, overall regulations regarding hospitals were regulated by sector through the Ministry of Health³. This health service institution has its own characteristics where the development of health science, the socio-economic life of community and technological advances have influence in improving quality services to achieve the highest degree of health.

During pandemic, the government has issued several policies, including Presidential Decree Number 11 of 2020 concerning the Determination of Public Health Emergency of Corona Virus Disease 2019 (COVID-19)⁴. Another decision related to Corona Virus Disease (COVID-19) is the Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as National Disaster⁵, so that mitigation efforts must be carried out in accordance with the Circular Letter of the Minister of Health NUMBER HK 02.01/MENKES/455/2020 YEAR 20206. However, if we look at the policies above, it is not stated in detail by the government how a hospital maintains the quality of health services during pandemic. It is also not explained which institution should evaluate the hospital's performance. In the Minister of Health Regulation No. 3 of 2020⁶ it is stated that one of the requirements to obtain operational permit extension is accreditation certificate and thus every hospital that wishes to extend its operational permit must undergo accreditation. In accordance with article 40 of the Hospital Law which states that to improve quality, hospitals are required to carry out periodic accreditation at least once every 3 years which is

carried out by an independent institution appointed by the government both from within and from abroad based on applicable accreditation standards. This is intended so that the hospital service system can be measured and improved⁷. However, with the pandemic, the licensing process is made easier without going through the accreditation process. Is the with easier licensing process, the quality of hospital services can still be accounted for?

Hospitals have important role to optimally improve the community health status, so it is hoped that hospitals will be able to manage their activities by prioritizing the responsibilities of professionals, especially health workers in carrying out their assigned duties and authorities. Health workers as one of health resources elements also have obligation to carry out their service duties professionally. Given that these health workers are legal subjects, in essence the relationship that occurs between health workers, patients and health facilities is legal relationship. Legal relationship always producereciprocal rights and obligations where the rights of one party become the obligations of the other party and vice versa. As legal subjects who have carried out their service duties within the correct legal corridor, in essence, health workers are entitled to get legal protection from the applicable positive legal rules⁸. Article 28D paragraph (1) of the 1945 Constitution states that everyone has the right to fair recognition, guarantees, protection and legal certainty and equal treatment before the law⁹.

Many events have happened recently regarding hospitals during the pandemic, among others, hospitals accused make patients as COVID-19 patients, forced pick up of covid patient corpse, and different results for patient swab examinations results between hospitals which caused patients to feel mentally disadvantaged due to the status of covid-19. Disputes between patients and hospitals and health

workers become news focus in the mass media. Due to the large amount of information circulating about medical actions carried out by health workers which are considered not in accordance with the wishes of the community, causing the public confidence in health workers to be reduced.

High public need for health services during pandemic can cause legal problems for both health workers and hospitals. Many hospitals are full because they have to treat covid-19¹⁰ patients, many rooms and beds must be added but the health workers that work in these hospitals are limited, so health workers have to work extra to serve patients who increase every day¹¹. This situation can cause physical and mental fatigue which over time may allow for negligence to occur. Law No. 36 of 2009 concerning Health (hereinafter Health Law)¹² regulates matters relating to the health workers negligence. Article 29 of the Health Law states that in the event that health worker is suspected of negligence in carrying out his profession, the negligence must be resolved first through mediation. If mediation is not achieved, the hospital must be legally responsible for all losses caused by health workers negligence in accordance with article 46 of the Hospital Law.

The paper goal is to find out how the legal impact of health services operations due to the ease of hospitals licensing during pandemic and how the hospitals responsibility to protect health workers during pandemic.

Discussion

Hospital (Licensing during Pandemic)

In the period prior to pandemic, hospital licensing was actually regulated in Article 25 of the Hospital Law, which states that hospital operating permit consists of building permit and operational permit. Where for building permit given period of 2 years and can be extended for 1 year, while for operational

permit given period of 5 years and can be extended if it meets the requirements. Article 27 of the Hospital Law states that hospital permit can be revoked if several things are found, such as the expiration date, no longer meeting the requirements and standards, there is evidence of violating laws and regulations and or on court orders for law enforcement. One of the requirements to extend operational permit is to undergo accreditation process with the aim that the operation of health services in accordance with standards, can be measured and improved, all of which aim to ensure patient, hospital and health workers safety.

During pandemic, all procedures to extend the operational permits cannot be carried out as usual. For hospitals whose the permit expired during pandemic, they may be faced with problems such as delays in obtaining operational permit. This can cause legal problems because the hospital as legal entity operates their activities without permit and also sanctions for health workers who take action within the institution. Article 62 of the Hospital Law states that anyone who intentionally operates hospital without permit as referred to in Article 25 paragraph (1) shall be sentenced to maximum imprisonment of 2 (two) years and maximum fine of IDR. 5,000,000,000. (Five billion rupiah), then the government has just issued the Job Creation Law¹³ which discusses hospital licensing which reads “Anyone who intentionally operates hospital as referred to in article 25 paragraph (1) which results in casualties/damage to health, safety, and or environment shall be sentenced to maximum imprisonment of 2 (two) years and maximum fine of IDR. 7,000,000,000.00 (seven billion rupiah)”. With the issuance of new regulations by the government in the Job Creation Law, hospitals can do several things, such as delaying the hospital licensing or not administer hospital permit at all because it seems that according to this law they cannot be punished if they do not result in casualties/damage to health, safety, and/or environment.

During pandemic, the government actually helped hospitals in the licensing process by issuing Circular Letter from the Minister of Health of the Republic of Indonesia Number HK.02.01/MENKES/455/2020 concerning Licensing and Accreditation of Health Service Facilities and Determination of Teaching Hospitals During the Corona Virus Disease 2019 Pandemic which adds hospital operating/operational permit whose validity period has expired but the permit extension process is constrained by the National Disaster or Corona Virus Disease 2019 Public Health Emergency. The operating/operational permit is declared to remain valid for 1 (one) year since the National Disaster status or Public Health Emergency of Corona Virus Disease 2019 (COVID-19) has been declared revoked by the Government, but the hospitals must make commitment in the form of attached letter whose format has been determined by the local government⁶. Furthermore, the hospital will still have to administer the hospital licensing as requirement for hospital operation as stated in Article 25 paragraph (1) of the Hospital Law. In the operational permit extension policy above, it does not require how the standard service quality and what indicators are used to measure the quality achievement as carried out or checked at the time of accreditation. Every 3 years the accreditation implementation in hospital ensures that all services provided to the community are according to standards. However, during pandemic, accreditation cannot be carried out because it is considered that the implementation process involves and gathers many people in one place. However, if accreditation is not carried out, it is likely that hospitals are “sleeping” or forgetting the standard procedures that have been set. This can lead to various quality services that may not meet the standards. The diversity of quality in services that do not have this standard can cause problems ranging from patient dissatisfaction to lawsuits because the procedures used may pose a threat to patient safety. If this situation occurs, there

is no standard procedure that can be used as legal protection.

Practice Permit of the Health Workers

Hospital is corporation in which there are health workers as the workers in it. In carrying out actions in hospitals, health workers must pay attention to several obligations, one of which is administer the practice permit including re-registration which can be done online during the pandemic. In Article 42 of the Medical Practice Law states that hospitals are prohibited from hiring doctors or dentists who do not have practice permit. In accordance with Article 80 of Law No. 29 of 2004 concerning Medical Practice, it is stated that any person who intentionally employs doctor or dentist as referred to in Article 42, shall be sentenced to maximum imprisonment of 10 years or maximum fine of IDR. 300,000,000.00 (three hundred million rupiah). It is stated in paragraph (2) that in the event that the criminal act as referred to in paragraph (1) is committed by a corporation, the punishment imposed is a fine as referred to in paragraph (1) plus a third or an additional penalty is permit revocation¹⁴. So it can be concluded that corporation is responsible for acts that are physically carried out by its employees.

Health Workers During Pandemic

Talking about the Hospital Law, of course, cannot be separated from the Health Law and the Health Worker Law. In General Provisions Article 1 point 1 of the Health Worker Law defines a health worker as every person who devotes himself to the health sector and has knowledge and or skills through education in the health sector which for certain types requires the authority to carry out health efforts while for the grouping of health workers stated in Article 11 paragraph 1.

During pandemic, health workers also at the forefront of handling covid 19 because they are dealing directly with patients suspected of / suffering

from covid 19. In this situation, health workers are very vulnerable infected by the virus when dealing with COVID 19¹⁵ patients. So here it is important to use Personal Protective Equipment (PPE) and understanding of standard procedures or regulations made in handling COVID-19 patients, especially for those who work in the COVID-19 isolation room.

According to Hila Halimatu who quoted from Rosario Baranco and Francesco Ventura in his article entitled Covid 19 And Infection In Health Care Workers An Emerging Problem, it was stated that the task of health workers in handling corona virus cases was not easy. The number of patients that continues to increase per day causes health workers to continue to work even beyond the provisions stipulated by Law¹⁶ as a result many health workers are exhausted from work¹⁷. Health workers can also experience burnout syndrome which has long-term effect on service quality because health workers can feel extreme fatigue, depression and even feel themselves less competent in carrying out their duties¹⁸. The psychological response of health workers in the COVID-19 pandemic is caused by feelings of anxiety about their own health. themselves due to the lack of PPE and the spread of the virus to their families¹⁹.

Hospital Responsibilities Toward Health Workers During Pandemic

The Hospital Law, the Health Worker Law and the Health Law are mutually supportive and closely related. This linkage regulates the standard of how hospital in providing health services to the community to achieve the highest degree of health including the responsibility arrangement, rights and obligations of either hospitals, health workers and patients. Although it has been regulated in the legislation, it turns out that its implementation is not as easy as the written rules.

During pandemic with so many workloads for

health workers such as working hours that exceed the legislation, physical and mental fatigue, anxiety, lack of PPE availability, lack of socialization of the Covid-19 handling flow and supporting facilities and infrastructure that are still inadequate can lead to negligence which can become a legal problem. The authors consider that four of the seven rights of health workers as stated in Article 57 of the Health Worker Law include 1) Obtaining legal protection when performing services in accordance with Professional Standards, Professional Service Standards, and Standard Operating Procedures; 2) Obtain complete and correct information from patients or their families; 3) Receive service fee; 4) Obtaining protection in work safety, based on human dignity, morals, decency, and religious values are rights that are often not fulfilled as they should be.²⁰

Talking about legal protection during pandemic, of course, cannot be separated from the rights and obligations of each patient and health worker. One of the health workers obligations as stated in Article 58 of the Health Worker Law is to provide health services in accordance with professional standards, professional service standards, standard operating procedures and professional ethics as well as the health needs of health service recipients. What about the rights of health workers during the pandemic, which is also the obligation of patients suspected being exposed to COVID-19, namely to provide honest information. If neglected, it is possible that health workers will not be protected from exposure to the COVID-19 virus. Based on data compiled by the IDI mitigation team from PDGI, PPNI, IBI, PATELKI and IAI from March to mid-January 2021, there were total of 647 medical and health workers died due to corona virus infection. Consisting of 289 doctors (16 professors) and 27 dentists (3 professors), 221 nurses, 84 midwives, 11 pharmacists, 15 medical lab personnel.

Sometimes hospitals are not able to prepare sufficient Personal Protective Equipment (PPE) as one of the hospital obligations to protect their health workers while on duty. PPE is the right of health workers that must be fulfilled so that they can work according to standards. Service standards for the patients care in the category of infectious disease outbreaks must be equipped with PPE in accordance with established standards. Occupational health and safety in hospitals need to be considered to prevent negative impacts that will arise for health workers who are at the forefront of COVID-19 services. Hospitals in Indonesia that are Covid referrals have different facilities and infrastructure. Based on the varying capabilities of each hospital, the government must make covid service standard which is the basis of reference for health workers in COVID-19 services. This standard is also used as legal protection for health workers in the event of complaint. The government, in this case the Ministry of Health, has also issued various guidelines in the COVID 19 management, one of which is the Technical Guide to Hospital Services During the Adaptation of New Habits which regulates the flow of Covid-19 patient care, the division of risk zones for COVID-19 transmission in hospitals, the application of the principles of PPI is in the period of adapting to new habits, developing health service innovation system and strengthening referrals in the new normal²¹.

In the event of a complaint, the Covid service standards can be used as benchmark for service by health workers. If there is no intentional act that results in losses, the hospital must provide legal protection in accordance with Law No. 44 of 2009. Health workers and hospitals have legal relationship that can be seen from the pattern of work relationships that occur. The hospital is a corporation that applies the principle of vicarious liability, this principle implies that responsibility arises due to negligence made by health workers²². In the Guidelines for the

Prevention and Control of Corona Virus Disease (Covid-19)²³. Hospitals need to make policies regarding the protection of health workers, such as: a) If health workers are sick, they are not allowed to work. b) Maximum working time of 40 hours a week with 7-8 hours per day and not exceeding 12 hours. c) Monitoring the health of workers through Acute Respiratory Infection /ARI surveillance. d) Monitoring the health status of health workers on a regular basis. e) Employability assessment for officers with comorbid and special conditions. f) If the officer who will work after sick will be reassessed. g) Ensuring health insurance and occupational accidents for officers in health facilities. h) Determination of the presence of Occupational Illness (PAK) in officers who are exposed to COVID-19 at work (in accordance with the Decree of the Minister of Health No. HK.01.07/Menkes/327/2020 concerning Determination of COVID-19. If there is a health worker who suffers property loss in effort to control the epidemic will be given compensation and awards for the risks borne in carrying out their duties as stated in Articles 8 and 9 of Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases²⁴. Article 9 of the Law on Outbreaks of Infectious Diseases is truly fair and commensurate with the risks faced by health workers.

Conclusion

There are still many factors that affect the hospital operations during pandemic that must be considered and improved by the hospitals.

1. The ease to administer hospital permits cannot show any evidence in controlling the quality and services of hospitals because there is no evaluation from independent body so that legal problems can occur in the future. Hospital licensing administration during pandemic should still be carried out at least through online because hospitals as legal subjects have obligations, one of which must have hospital operating permit.

2. The hospitals responsibility to protect health workers during the pandemic is still not carried out optimally due to the limitations of each hospital are different so it is necessary to make regulations including how to apply them based on laws and regulations and various guidelines and manuals issued by the Ministry of Health.

Ethical Clearance : Nil

Conflict of Interest: Nil

Source of Funding : Self Funding

Acknowledgement : Nil

References

1. HaryantiPusta S. Update March 27 2021 Added 4,461 Covid-19 Cases in Indonesia [Internet]. [cited 2021 May 4]. Available from: <https://nasional.kompas.com/read/>.
2. Law No. 44 of 2009 Concerning Hospitals, State Gazette of the Republic of Indonesia of 2009 Number 153, Supplement to the State Gazette of the Republic of Indonesia Number 5072.
3. Marsya. Health Law: In Perspective of Modern Public Health Services [Internet]. [cited 2021 January 2]. Available from: www.legalitas.org
4. Presidential Decree Number 11 of 2020 Concerning the Determination of the Corona Virus Disease 2019 (COVID-19) Public Health Emergency.
5. Presidential Decree Number 12 of 2020 Concerning the Determination of Non-Natural Disasters of the Spread of Corona Virus Disease 2019 (COVID-19) as National Disasters.
6. Circular Letter of the Minister of Health Number 455 of 2020 Concerning Licensing and Accreditation of Health Service Facilities and Determination of Teaching Hospitals During the Corona Virus Disease 2019 (Covid 19) Pandemic.
7. Regulation of the Minister of Health Number 3 of 2020 Concerning the Classification of Hospital Licensing.
8. ArisPrioAgusSantoso, Anita DwiSeptiarini, SafitriNurRohmah, AryRachmanHaryadi, *Legal Protection for Health Workers in the Task Force for the Acceleration of Handling Covid-19 From the Viewpoint of State Administration Law*. Jakarta: Bina Nusa; 2020: 20p.
9. The 1945 Constitution of the Republic of Indonesia Article 28 D.
10. Critical Health Facilities for Untreated Patients [Internet]. [cited 2021 January 4]. Available from: <https://www.kompas.id/baca/kesehatan>.
11. Hospitals Are Full and Covid-19 Task Force Urged to Find Solutions [Internet]. [cited 2021 January 5]. Available from: <https://nasional.kompas.com/read/>.
12. Law Number 36 of 2009 Concerning Health, State Gazette of the Republic of Indonesia of 2009 Number 144, Supplement to the State Gazette of the Republic of Indonesia Number 5063.
13. Law Number 11 of 2020 Concerning Job Creation, State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573.
14. Law Number 29 of 2004 Concerning Medical Practice, State Gazette of the Republic of Indonesia of 2004 Number 116, Supplement to State Gazette Number 44311.
15. Theresia Louise and YosiaHetharie, Legal Protection Toward Occupational Safety for Health Workers Due to the Covid-19.Pandemic. *SASI*. 2020: 26(2):280-285p. DOI : <https://doi.org/10.47268/sasi.v26i2.307>
16. Rosario Baranco and Francesco Ventura, Covid 19 And Infection In Health Care Workers An Emerging Problem.*Medico-Legal Journal*. 2020: 88(2): 65-66p. DOI: 10.1177/0025817220923694.

17. Fadli, F., Safruddin, S., Ahmad, A.S., Sumbara, S et al. Factors Affecting Anxiety in Health Workers in Efforts to Prevent Covid-19. *Indonesian Journal of Nursing Education*. 2020: 6(1): 57-65p. DOI: 10.17509/jpki.v6i1.24546
18. Giovanio D. P., 83% of Indonesian Health Workers Experienced Moderate and Severe Burnout Syndrome During the Covid-19 Pandemic Period [Internet]. [cited 2021 February 13]. Available from: <https://fk.ui.ac.id/berita/83>.
19. Indonesian Doctors Association Mitigation Team, Until January 27, 647 Medical and Health Workers Died Due to Covid 19 [Internet]. [cited 2021 March 18]. Available from: <https://www.tribunnews.com/nasional>.
20. Decree of the Minister of Health of the Republic of Indonesia Number 8 of 2010 Concerning Occupational Health and Safety Standards in Hospitals.
21. Directorate General of Health Services. *Ministry of Health of the Republic of Indonesia, Technical Guidelines for Hospital Services During the Adaptation of New Habits*. Jakarta: Ministry of Health of the Republic of Indonesia; 2020: 4-5p
22. Nanda DwiHaryanto. Hospital Responsibility for Losses Suffered by Patients Due to Actions by Medical Personnel in Therapeutic Agreements. *Private Law Journal*. 2019: 7(2): 246-253p. DOI: <https://doi.org/10.20961/privat.v7i2.39331>
23. Ministry of Health of the Republic of Indonesia. *Guidelines for The Prevention of Covid-19 Control*. Jakarta: Ministry of Health of the Republic of Indonesia: 2020. 22p.
24. Law Number 4 of 1984 Concerning Outbreaks of Infectious Diseases. State Gazette of the Republic of Indonesia of 1982 Number 12. Supplement to the State Gazette Number 3215.

Abstract