

MODEL FOR COMPLETING PATIENT RIGHTS TO RISKS INVOLVED IN HEALTH CLINIC BUSINESS

Syafruddin

Faculty of Law, Universitas Borneo Tarakan, Indonesia
syafruddin@borneo.ac.id

Abstract

Fulfilment of Health is one of the main rights of every citizen. The need for the health sector, making this field one of the profitable businesses in Indonesia, one of which is a health clinic. This study explores and finds a model for fulfilling the patient's right to risk due to the beauty click business. This research is critical, provides legal certainty to patients due to the risks posed by the health clinic business. This research included the concept of doctrinal law research, which emphasizes the legal substance by analyzing legal instruments and related policies. The study results show that the patient is a customer who gets civil and criminal protection based on Article 58 paragraph (1) of Law No. 36/2009 and Article 19 paragraph (2) of Law No. 8/1999. The government or ministry of health should actively evaluate the implementation of a health clinic business to minimize medical risks caused. It means that it looks at the existence of a business license and evaluates it periodically and emphasized in the Minister of Health No. 9/2014. Nevertheless, periodic evaluation and confirmed in the Minister of Health No. 9/2014. However, periodic evaluation and confirmed in the Minister of Health No. 9/2014.

Keywords: Health Clinic; Model; Medical Risk; Patient Rights.

A. INTRODUCTION

When someone is experiencing a health problem, the first place to go is a health facility for treatment. The welfare of the community is a significant factor in choosing health facilities. It also has an impact on the shape and quality of health facilities in an area. Health is the significant investment and capital so that we can live productive, happy and prosperous lives. Therefore, the existence of health facilities is fundamental to expand access to health services to the community. There are 4 (four) main factors that determine the degree or level of public health. First, the environment affects 45% of the degree of human health. Sanitation facilities are one of the things that can be an indicator of whether the environment is healthy or not. Second, namely Lifestyle or Behavior. Such as sports culture and diet affect 30%. The third is affects the level of human health, namely Health Facilities, which affects 20%. Furthermore, fourth, other things that are genetic effect 5% of the level of human health.¹

¹ Adhitya Himawan, Desember 29th 2017, *Klinik Berperan Perluas Akses Pelayanan Kesehatan Masyarakat*, <https://www.suara.com/news/2017/12/29/110550/klinik-berperan-perluas-akses-pelayanan-kesehatan-masyarakat>, Accessed on May 13th, 2020.

The presence of a health clinic is also significant. It is the successor to health development from a curative aspect and supports a tiered referral system. Thus the situation is to reduce the number of patients in hospitals. The presence of this clinic is expected to provide treatment to those who are sick and become the spearhead of a campaign for healthy living behaviour. However, in general, most health clinics are centred in urban areas where the population is crowded.

This situation causes health clinics in each area to be uneven due to the community's different lifestyle needs. In addition, the establishment of a health clinic is also not easy, and this is because the clinical accreditation process is still tricky. Thus, the number of health clinics that have been accredited at this time is not too many. One of the motivations of health clinics is to support equitable distribution of public health services.

Some individuals take advantage of a health clinic to assist the community's needs in the health sector. The phenomenon in Indonesia was an illegal abortion clinic in the Paseban area, Central Jakarta, which made a profit of Rp. 5.5 billion for 21 months of operation. In total, for 21 months, the confession (suspect) was almost Rp. 5.5 billion more in profit," said Head of Public Relations of Polda Metro Jaya Police Sr. Comr. Yusri Yunus at the location, Friday, February 14, 2020. The rates are different for each patient. To abort fetuses aged one month are subject to a tariff of Rp. 1 million. Then Rp. 4 to Rp. 15 million to abort fetuses over four months of age.² In addition, the police raided the health centre in Kemang, South Jakarta, on Saturday, January 11, 2020. From the investigation results, the clinic that carried out the practice of illegally injecting stem cells or *stem cells* set a price of 230 million rupias or about 16,000 US dollars for a single injection.³

Ignorance of the public often leads to misconceptions that consider every medical failure in hospitals or health clinics, such as inadequate or unexpected results resulting from medical malpractice or medical negligence. Failure can be caused by several possibilities, such as the result of a course of the disease itself, so it is not related to the doctor's medical actions. However, it can also be due to negligence or intentional.

Several similar studies include the Fulfillment of Patient Rights in a Hospital in Jakarta. The results showed that the limited knowledge of nurses was an obstacle to fulfilling patient rights, and there was no relationship between nurses' knowledge and nursing practice.⁴ Second, the right of citizens to obtain health services based on the 1945 Constitution, with the results of research that many patients do not know their rights and do not take advantage of opportunities as patients, so there is a need for public

2 Hardani Triyoga, Februari 16th 2020, *Klinik Aborsi Ilegal di Paseban, Warga: Saya Kira itu Kantor Hukum*, <https://www.viva.co.id/berita/kriminal/1263515-klinik-aborsi-ilegal-di-paseban-warga-saya-kira-itu-kantor-hukum>, Accessed on May 20th, 2020.

3 Jessi Carina, January 12nd 2020, *Klinik Stem Cell Ilegal di Kemang Patok Harga Rp 230 Juta Sekali Suntik*, <https://megapolitan.kompas.com/read/2020/01/12/15424341/klinik-stem-cell-ilegal-di-kemang-patok-harga-rp-230-juta-sekali-suntik>, Accessed on May 13th, 2020.

4 Diwa Agus Sudrajat, Dewi Irawati and Mustikasari, Pemenuhan Hak-Hak Pasien di Sebuah Rumah Sakit di Jakarta, *Jurnal Keperawatan Indonesia*, Vol. 12, No. 2, Juli 2008, page. 70-75.

health education.⁵ Third, Social Justice in the Implementation of Beauty Clinics in Indonesia with the results of this social justice research covering the fulfilment of the rights and obligations of stakeholders involved in the implementation of aesthetic beauty clinics, namely patients, the government and the aesthetic beauty clinic itself. Social justice in the implementation of aesthetic beauty clinics in Indonesia is fulfilling the right to healthy conditions, health services, guarantees of legal protection, legal certainty, and rights and obligations of government patients and beauty clinics.⁶ From several existing studies, this research focuses more on the standards that beauty clinic business actors can provide to patients and the legal consequences patients can obtain for negligence in the health clinic business.

Seeing the phenomenon of the existence of a health clinic, the problems presented in this study are, first, how is the standard of health clinic services in Indonesia and how is the model for fulfilling the patient's rights to the risks arising from the actions of a health clinic business?

B. RESEARCH METHODS

This type of research is normative juridical research or known as doctrinal research. The type of normative juridical writing is a problem approach with the intent and purpose of examining the applicable laws and regulations and a theoretical study of the existing literature and then relating it to the problems that are the subject of discussion discussed in this study. According to Soerjono Soekanto, the normative juridical approach is legal research conducted by examining library materials or secondary data as the basis for research by searching for regulations and literature related to the problems studied.⁷

Meanwhile, the approach used is a legal approach to see the consistency and suitability between regulations by understanding the content of the philosophy behind the law.⁸ A conceptual approach is also needed in this study, namely legal concepts and principles relevant to the issues at hand and as a basis for building a legal argument in solving the issues at hand.⁹

C. RESULT AND DISCUSSION

1. Health Clinic

5 Muzayanah, Hak Warga Negara Untuk Mendapatkan Pelayanan Kesehatan Berdasarkan UUD Tahun 1945, *Jurnal Pengabdian Kepada Masyarakat Media Ganesha FHIS*, Vol. 1, No. 1, Maret 2020, page. 43-56.

6 I Gusti Ayu Ketut Rachmi Handayani, Pujiyono and Siska Diana Sari, Keadilan Sosial Dalam Penyelenggaraan Klinik Kecantikan di Indonesia, *Citizenship: Jurnal Pancasila dan Kewarganegaraan*, Vol. 7, No. 2, 2019, page. 139-148.

7 Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Rajawali Pers, Jakarta, 2001, page. 13-14.

8 Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, page. 93.

9 Ibid, page. 137.

According to the Indonesian Dictionary, the word clinic contains three meanings: first, hospital or health institution where people seek treatment and obtain medical advice and where medical students observe cases of illness suffered by patients. Second Special treatment centre for family planning and lung disease. Moreover, third Health organizations engaged in providing curative health services (diagnosis and treatment), usually for one type of health disorder.¹⁰

The Encyclopedia defines a *clinic* as the name of an institution that provides diagnosis and medical care to outpatients. The comprehensive definition is the name of a facility that provides ambulatory patients with medical diagnosis and treatment. The dispensary, which gave free drugs to those who could not afford a charge, was the precursor of the modern clinic. Around the end of the 17th century, dispensaries began to appear in London. Thanks to Benjamin Rush's efforts, the first dispensary in the United States was established in Philadelphia in 1786. Another was founded in 1791 in New York City, and another in 1796 in Boston. The early clinics often provided home care, but later they evolved as places to treat those who could visit them.¹¹

Clinics are health service facilities that provide individual health services that provide primary and specialist medical services. A clinic is a small public health facility established to provide care to outside patients. Usually, the clinic only treats minor ailments such as fever, while more severe cases are referred to the hospital. Based on the type of service, the clinic is divided into Primary Clinic and Main Clinic. The government can run these two types of clinics, local government or the community. *Primary Clinic* is a clinic that provides essential medical services. *Main Clinic* is a clinic that provides specialist medical services or primary and specialist medical services. The health services provided can be outpatient, one daycare, inpatient care and home care. In addition, clinics must be equipped with adequate medical and non-medical equipment according to the type of service provided. The equipment requirements are:

- a. meet quality, safety and security standards
- b. Have a distribution permit.
- c. The Health Facility Security Agency and an authorized testing and calibration institution must test and calibrate it regularly.

2. Medical Risk

The terms "risk" and "medical" make up the phrase "medical risk." "The probability of something horrible happening at some point in the future; a scenario that may be harmful or have a negative result" or "the prospect of something terrible happening in the future; a situation that

10 <https://kbbi.kemdikbud.go.id/entri/klinik>, Accessed on June 25th, 2020.

11 The Columbia Electronic Encyclopedia®. S.v. *Health clinic*, Retrieved August 13, 2020 from <https://encyclopedia2.thefreedictionary.com/Health+clinic>

could be dangerous or have an unfavourable outcome" is what risk refers to.

While the medical word meant is a medical action performed by a doctor, namely: "an action taken on a patient in the form of diagnostic or therapeutic".¹² When combined, the medical risk is interpreted as a condition that the patient or the doctor or dentist himself is not desired. After the doctor or dentist has tried their best and professional standards, medical service standards, and professional standards of procedures have been met, the accident is still happening.

According to the health dictionary, the medical risk is the risk of an adverse outcome of a diagnostic or therapeutic procedure. Which contains five dimensions: identity, permanent/temporary, timing, probability/likelihood of occurrence, and severity of the outcome for a particular patient.¹³

In contrast to *malpractice*, it should be noted that the medical world uses the term *malpractice*, while the Big Indonesian Dictionary uses the word *malpractice*. *Black's Law Dictionary* defines malpractice as: 'Professional misconduct or an unreasonably low level of competence or failure of one professional rendering services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss or damage to the recipient of those services or to those entitled to rely upon them.

3. Medical Criminal Law

The national criminal law constructs medical practice in several related laws, such as Law No. 29 of 2004 on the Practice of Dictatorship, Law No. 44 of 2009 on Hospitals, the Civil Code, and the Criminal Procedure Code (KUHAP). These various laws clearly define the rights and obligations of doctors and patients who use health services.¹⁴

The regulation regarding medical practice in the law is based on three arguments: First, health as a human right must be realized in the form of offering diverse health efforts to the entire community through the execution of high-quality, low-cost health development. Second, the implementation of medical practice required by doctors. Who has high ethics and morals, expertise and authority whose quality must continuously improve through continuous education and training, certification, registration, licensing, guidance, supervision, and monitoring so that the implementation of medical practice is under the development of science and technology? Third, the responsibility of the

12 Krista M. Curell, JD, BSN, *Grating Risk Management, Quality Management, and Patient Safety into the Organization, in Principles of Risk Management and Patient Safety*, Editor: Barbara J. Youngberg, Jones & Bartlett Learning, Canada, 2011), page. 19.

13 Medical risk, (n.d.) *Segen's Medical Dictionary*, 2011, Retrieved May 7 2020 from <https://medical-dictionary.thefreedictionary.com/medical+risk>

14 Setya Wahyudi, Tanggung Jawab Rumah Sakit Terhadap Kelalaian Tenaga Kesehatan dan Implikasinya, *Jurnal Dinamika Hukum*, Vol. 11, No. 3, September 2011, page. 510.

joint health clinic business for business losses depends on the form of the cooperation unit used.¹⁵ For those who use the unitary form of Civil Fellowship cooperation, the participants have made a provision that doctors only enter their personnel or expertise and are not burdened with responsibility for business losses. However, those who are responsible are clinical entrepreneurs. Meanwhile, those who use the form of a Limited Liability Company, if there is a business loss, the responsibility refers to Law No. 40 of 2007 article 3, which stipulates that the shareholders of the company are not personally responsible for the engagement made on behalf of the company and are not responsible. The loss of the company exceeds the value of the shares that have been taken.

According to article 1, number 1 of Law No. 8 of 1999 concerning Consumer Protection, it is stated that legal protection for consumers is any effort that ensures legal certainty to protect consumers.¹⁶ Legal certainty to protect consumers is, among others, by increasing the dignity of consumers and opening access to information about goods or services for consumers and fostering an honest and responsible attitude of business actors.

It is related to the above objectives, which provide guarantees and protection to the public in the health sector. The legal aspects contained in the health sector, in this case, the basic concept of health law is the current condition which includes (1) Human Rights (HAM); (2) International Conventions; (3) Legality, at the national and international levels; and (4) professionalism of health workers and advances in science and technology. However, in reality, there are still many violations of consumer rights committed by business actors.

Patients are clinical consumers who receive health services, and clinics are business actors who provide health services to patients. Patients as consumers are in a weak position compared to clinics, so legal protection is needed, especially for patient rights, to provide legal certainty.

The relationship between the clinic and the patient begins when a patient registers at the clinic or if the patient comes in an emergency condition or is in an unconscious state and requires immediate help without registering first, the relationship between the clinic and the patient starts from the first time the concerned clinic assists the patient.¹⁷

15 Gayus Lumbuun, *Restorasi Hukum Pidana Medik*, Nomor 5 Edisi September Tahun 2014, Media Komunikasi Mahkamah Agung Republik Indonesia, page. 63.

16 Siska Diana Sari, *Perlindungan Hukum Bagi Pengguna Klinik Kecantikan Estetika Berdasarkan Perspektif Hak Konstitusional Warga Negara*, *Citizenship Jurnal Pancasila dan Kewarganegaraan*, Vol. 6, No. 2, Oktober 2018, page. 140-154.

17 Hui Sang and Jiuqing Cheng, *Effects of Perceived Risk and Patient Anxiety on Intention to Use Community Healthcare Services in a Big Modern City*, *Sage Journal, SAGE Open*, April 2020, page. 1-10.

The patient. When viewed from the legal relationship that arises between the patient and the clinic, it can be distinguished:¹⁸

- a. Maintenance agreements are agreements between the clinic and patients that the clinic will provide treatment room and nurse where care workers perform maintenance actions.
- b. A medical service agreement is an agreement between the clinic and the patient that the medical staff at the clinic will make maximum efforts to cure the patient through medical inspanning.

System of legal protection for patients who applied the clinic is that the clinic ensures legal protection for doctors or health workers to prevent medical errors in treating patients and vice versa with patients getting legal protection of responsibility clinics and health care workers.¹⁹ To create legal protection for patients, the parties must know and understand the inherent rights and obligations, including health service providers (clinics), to be responsible for the profession given to recipients of health services (patients).

If the form of a non-profit clinic or a government clinic whose purpose is not to seek economic profit, then all medical actions are carried out by health services or doctors in particular and patients who receive health services. So they cannot be considered as business actors as contained in the provisions of the Consumer Protection Law. Moreover, when a medical dispute arises due to medical negligence by a doctor, the clinic and doctor also have economic and legal responsibilities. However, being responsible for the medical dispute is not a business actor as regulated in Article 19 paragraph (1) and (2) Consumer Protection Act.

However, suppose a legal entity manages the clinic to make a profit in the form of a limited liability company or limited liability company when talking about a limited liability company. In that case, it means talking about a capital association whose purpose is to seek economic profit. Patients who suffer losses due to a lack of professional health services can hold this clinic accountable. Especially doctors in their medical actions, both legally and economically, it through the Consumer Protection Act. Suppose it is associated with the business world. In that case, the doctor-patient relationship is a relationship between business actors (producers) and consumers. The characteristic of a therapeutic relationship is that it is engaged in providing health services with uncertain results.²⁰

Article 19 paragraph (2) of Law No. 8 of 1999 concerning Consumer Protection has stipulated that "compensation, as referred to in

18 Fred Ameln, *Kapita Selektta Hukum Kesehatan*, Grafikatama Jaya, Jakarta, 1991, page. 75.

19 Rapeepong Suphanchaimat, Kanang Kantamaturapoj, Weerasak Putthasri and Phusit Prakongsai, Challenges in the provision of healthcare services for migrants: a systematic review through providers' lens, *BMC Health Services Research*, Vol. 15, 2015, page. 390.

20 Wahyu Rizki Kartika Ilahi, Resiko Medis dan Kelalaian Medis dalam Aspek Pertanggungjawaban Pidana, *Jurnal Hukum Volkgeist*, Vol. 2 No. 2, 2018, page. 170-186.

paragraph (1), can be in the form of refunds or replacement of goods and services of similar or equivalent value, or health care and providing compensation following the provisions of the applicable laws and regulations". Observing the article, it can see that the responsibilities of business actors include:

- a. responsibility for compensation for damage to a product or service,
- b. responsibility for compensation for pollution,
- c. responsibility for compensation for consumer losses caused by inadequate services and goods produced.

However, what needs to be observed is also related to the substance of Article 19 paragraph (2), In addition, to the obligations of each person in terms of health, the obligations of each person, specifically as a patient receiving health services, are as follows:

- a. Provide complete and honest information about their health problems.
- b. Comply with the advice and instructions of doctors and dentists.
- c. Comply with applicable regulations in health care facilities.
- d. Provide compensation for services received.

To create business convenience for business actors and as a balance for the rights granted to consumers, the Consumer Protection Law stipulates the rights of business actors, namely:

- a. The right to receive payments by the agreement regarding the conditions and exchange rates of traded goods or services;
- b. The right to obtain legal protection from the actions of consumers who have bad intentions;
- c. The right to defend and appropriately in the legal settlement of consumer disputes;
- d. The right to rehabilitate a reputation if it is legally proven that traded goods and services do not cause consumer losses;

Every responsibility must have a basis, namely things that cause a person's legal right to sue another person and a right that gives birth to a legal obligation for others to give accountability. In carrying out its duties, the clinic does not always provide the results expected by all parties. Sometimes the services provided can cause disasters such as permanent disability, paralysis, blindness, deafness, or death. If the clinic has carried out all the processes under applicable standards, the clinic should not be responsible. However, if the clinic causes the patient's loss, the clinic must be responsible. Liability according to law consists of several types, namely:

- a. Strict Liability

Strict Liability or absolute responsibility is where the element of error is ignored. This principle requires the defendant to be responsible for the losses suffered by the consumer without proving whether or not there was any fault with him. The rationalization of

this principle is that business actors are genuinely responsible for the interests of consumers. The Consumer Protection Act does not apply the principle of absolute responsibility because it is based on Article 28 of the UUPK that proving the presence or absence of an element of error for patient losses is the responsibility of the business actor. Thus, absolute responsibility does not apply in the UK.

b. Vicarious Liability

Vicarious Liability is the responsibility of the employer for the loss of another party caused by its employees. In this case, the principle of responsibility can be applied to clinics where clinics can be held responsible for losses caused by medical personnel. All responsibility for the work of medical personnel is the responsibility of the clinic where they work.

According to Article 19 of the Consumer Protection Law, business actors are responsible for compensation for damage, pollution, and consumer losses due to consumer goods and services produced or traded. Based on this description, the responsibilities of business actors include:²¹

- a. Liability for compensation for damage, or contamination, or consumer-generated and traded losses;
- b. The compensation referred to maybe in the form of a refund or replacement of goods and services of a similar or equivalent value or health care and the provision of appropriate compensation.;
- c. Compensation is giving within a grace period of seven days after the date of the transaction;
- d. As stated in paragraphs 1 and 2, the payment of compensation does not rule out the possibility of criminal charges based on additional proof of an element of error;
- e. If the business actor can prove that the error was caused by the consumer, the rules of paragraphs 1 and 2 do not apply.

Let us look at the responsibilities of business actors according to the Consumer Protection Law. There is one problem in its application to health services, namely in paragraph 3, which states that compensation will be carried out within a grace period of 7 days after the transaction date. It will be difficult because, in health services, new patients often suffer losses or the losses suffered by patients are only known within seven days after the transaction. Therefore, according to the author of Article 19, paragraph (3), it cannot be applied in health services.

Accountability for medical services to patients is necessary to know the relevant party in the medical personnel. Medical personnel in question are doctors who work together with other professionals in organizing and providing medical services to patients.²²

21 J. Guwandi, *Dokter, Pasien, dan Hukum*, Balai Penerbit FKUI, Jakarta, 2003, page. 72.

22 Elsje Scheffler, Surona Visagie and Margurite Schineider, *The Impac of Health Service Variables on Healthcare Access in a Low Resourced Urban Setting in The Western Cape*,

Suppose in a medical action an error occurs and results in a loss to the patient. In that case, the responsibility is indirectly on the clinic by first seeing whether a doctor or other medical personnel made a mistake.²³ Any problems that occur either intentionally or unintentionally need to be investigated first. If a doctor makes an error, the clinic is generally responsible and the doctor as the executor of the medical action may be sanctioned.

Each recipient of health services who are harmed due to errors or negligence of health workers can ask for compensation following the provisions of the legislation. If a health worker is suspected of being negligent in carrying out his profession, which causes harm to the recipient of health services, disputes arising from such negligence must be resolved first through dispute resolution outside the court under the provisions of the legislation. Furthermore, in the Health Personnel Law, related to administrative sanctions, it is stated in Article 82, namely:

- a. Every health worker who does not implement the provisions of Article 47, Article 52 paragraph (1), Article 54 paragraph (1), Article 58 paragraph (1), Article 59 paragraph (1), Article 62 paragraph (1), Article 66 paragraph (1), Article 68 paragraph (1), Article 70 paragraph (1), Article 70 paragraph (2), Article 73 paragraph (1) are subject to administrative sanctions.
- b. Every health service facility that does not implement the provisions of Article 26 paragraph (2), Article 53 paragraph (1), Article 70 paragraph (4), and Article 74 is subject to administrative sanctions.
- c. Following their respective authorities, the government, provincial government, and district/municipality regional governments shall impose administrative sanctions on health workers and health service facilities as referred to in paragraphs (1) and (2).
- d. The administrative sanctions as referred to in paragraph (3) may be in the form of (1) verbal reprimand; (2) Written warning; (3) Administrative fines; and (4) Revocation of permits.
- e. The procedure for imposing administrative sanctions on health workers and health service facilities, as referred to in paragraphs (3) and (4), is regulated by government regulation.

Regarding criminal provisions, the consequences of malpractice of health workers, in this case, can refer to Article 84, namely:

- a. Every health worker who commits serious negligence resulting in serious injury to the recipient of health services shall be punished with imprisonment for a maximum of 3 (three) years.
- b. If the gross negligence mentioned in paragraph (1) results in death, each health worker shall be sentenced to a maximum imprisonment of 5 (five) years.

South Africa, *Afr J Prm Health Care Fam Med*, Vo. 7 No. 1, 2015, page. 11.

23 Gary Marchant, et al, From Genetics to Genomics: Facing the Liability Implications in Clinical Care, *The Journal of Law, Medicine & Ethics*, Spring, Vol. 48, 2020, page. 11-43.

Article 84 relates to the clinic's responsibility as a business entity responsible for the activities carried out by its health workers. Following by Article 58 paragraph (1) 1 of Law No. 36 of 2009 concerning health, namely: "Everyone has the right to claim compensation for someone, a health worker and health services that cause losses due to errors or omissions in the health services they receive." Therefore, if the clinic is proven to have made a mistake, the clinic must be responsible to the patient. However, the arrangement in this article has the weakness of the Health Act. It means not sanctioned either administratively or criminally so that the patient is in a weak position.

Regarding the responsibility for the patient, clinical medical can give by the clinic in the event of an error/negligence/malpractice committed by the doctor. The patient who suffers a loss can claim compensation from the clinic by submitting the complaint or loss to the clinic's director concerned by providing information regarding the complaint or loss from the services of a doctor or other medical personnel. Both parties are asked for information about what problem occurred, and a solution is sought. Suppose it is proven that the loss suffered by the patient is caused by the doctor's error/negligence/malpractice. From these cases, one responsible for the loss can be the clinic or the doctor, according to the decision made by the Clinic director.

Suppose the clinic's dispute resolution is not acceptable amicably. In that case, it means that the patient is not satisfied with the decision made by the clinic director, or both parties agree upon no problem-solving point. Then the patient himself can report the dispute to the Health Service or the Indonesian Doctors Association to resolve the dispute. Suppose a solution to the dispute is still not found. That case shows the patient may submit a written complaint to the Chairperson of the Indonesian Medical Discipline Honorary Council under Article 66 paragraph (1) of Law No. 29 of 2004 concerning Medical Practice. Anyone who knows or whose interests have been harmed by the actions of a doctor or dentist in carrying out medical practice may submit a written complaint to the Chairperson of the Indonesian Medical Discipline Honorary Council. The complaint must at least contain a. the complainant's identity; b. the name and address of the doctor's or dentist's practice and the time the procedure was performed; and c. reason for complaint. Furthermore, the complaints as referred to in paragraphs (1) and (2) do not eliminate the right of everyone to report suspected criminal acts to the competent authorities and file a lawsuit for civil damages to the court.

In this examination, the Indonesian Medical Discipline Honorary Council examines and decides on complaints related to the discipline of doctors and dentists. If an ethical violation founding during the examination, the Indonesian Medical Discipline Honorary Council will forward the complaint to a professional organization. About the decision, in this case, it is stated in Article 69 that:

- a. The decision of the Indonesian Medical Discipline Honorary Council is binding on doctors, dentists, and the Indonesian Medical Council.
- b. It is possible that the decision referred to in paragraph (1) will be judged not guilty or that disciplinary action will be taken.

The disciplinary sanctions as referred to in paragraph (2) can be in the form of: giving written warnings, recommendation for revocation of the registration certificate or practice permit; and The obligation to follow education or training at an institution medical education or dentistry.

Meanwhile, the criminal provisions in the Medical Practice Act are referred to in articles 75-80. This Medical Practice Law means that health as a human right must be realized by providing various health efforts to the entire community by implementing quality and affordable health development for the community. That medical practice, which is at the heart of many health-related activities, must be carried out by doctors and dentists with high ethics and morals, expertise, and authority, and whose quality must be continually improved through continuous education and training, certification, registration, and licensing, as well as supervision development.

In addition, providing legal certainty and legal protection is to improve, direct and provide a legal basis and rearrange various legal instruments. It regulates the implementation of medical practice so that science and technology can run it, and it is necessary to regulate medical practice in law. To improve the quality of clinical services and patient safety is the responsibility of all clinical medical personnel who provide patient care. Clinical personnel must play an active role in identifying clinical service quality problems, conducting analysis, preparing improvement plans, implementing, and following up. Identification of clinical service quality problems.

Although the risk tends to have a detrimental impact on the company, entrepreneurs must still take this risk. Several reasons encourage someone to take this risk. The motivation to take risks can be based on the desire to get a profit or return commensurate with the first sacrifices. When an entrepreneur engages in risky activities with the motivation to make a profit, he will usually calculate the magnitude of the risk he faces. Based on these calculations, it will set the desired profit target. In addition, the reason someone wants to take risks can also be due to compulsion. In this case, a person may take a risk because the accompanying conditions are very urgent. This urgent condition makes a person less concerned about the risks that must be faced. Even though they understand the risks they face, they do not have enough time to calculate the magnitude of their risks. There are several types of business risks, including:²⁴

- a. Strategic Risk (Strategic Risk)

24 Adam Jolly, *Managing Business Risk*, Kogan Page Publishers, 2003, page. 6-7.

Judging from its name, it is clear that this risk is closely related to strategy. In other words, this risk can be summed up as risk or uncertainty resulting from an immature strategy in running a business. Seeing businesses flying successfully around the world but often do not know how hard they face when building a business. Strategy is needed and well prepared in running a business, or sometimes a business strategy must be carried out when there is a competition that might threaten the business.²⁵

The solution to strategic risk is to prepare what strategies might be implemented when starting or starting to build a business so that later our business can run on the right track to minimize losses that may be caused.

b. Compliance Risk

Compliance risk means the risk or uncertainty caused by our non-compliance with the written or unwritten rules or regulations, or laws set by the local government. Compliance risks in doing business, for example, in an area that prohibits business activities themed with children's games, which may cause children to be lazy to study, should consult with the local government first. Moreover, if they do not comply with local regulations, the business may lose money because when the written law is not obeyed, it could be subject to a hefty fine.

The solution to the compliance risk is to build a business in stages while learning about the business that might be in the future, studying the benefits, losses that the surrounding community and other losses may have been stated in the applicable laws and customs.

c. Operational Risk

Operational risk is more directed to a failure that is not expected and usually occurs in the company's daily activities. It may occur due to several technical failures, such as an error server, or it can also cause by individuals (employees) or processes in the company's operational activities. For example, the error in writing numbers on the fines that must be paid by the company, causing losses and becoming one of the operational risks. Other examples, caused by natural disasters, company fires, power cuts, or problems with website hosting. Anything that can interfere with the company's primary operations of categorized as operational risk. These events may seem compared to the strategic risks that can significantly impact losses, namely bankruptcy. However, operational risk can still have a more significant impact on the company. Not only will it incur additional costs for troubleshooting. However, issues of operational failure can also affect customer value, where customer orders may not be delivered or make it impossible to contact. If the server or internet connection has problems, it can undoubtedly cause revenue

25 Michael Marczak, *Risk management in health care system-methodology and chosen examples*, Technical University of Lodz, 2008, p. 18.

losses and damage the company's reputation. Operational Risk Solutions, namely, some things that might prevent operational risk are to use Human Resources. They are trained and professional in their fields; if marketing and ordering use website technology, it may be better to have a second website to help make the ordering process. It could be a notification about the company's info through a second outside the main website. In addition, we can also use social media to solve problems within the company to prevent the company's reputation from falling.

d. Financial Risk

This risk impacts the company's finances, often associated with extra costs or loss of company income. However, the financial risk category usually refers to the inflows and outflows of money in the business cycle and is likely to result in financial losses. _ Another financial risk is debt. Having much debt, of course, also increases financial risk for the company, especially if most of the debt currently held is long-term debt and will mature shortly. _Financial Risk Solutions are risks that are difficult to prevent, considering that this occurs because of changes that we cannot predict. Of course, it would be better if the buying and selling system was carried out with safer conditions; for example, credit sales should secure with a customer's guarantee. If possible, the company should not take on debt; it is enough to sell a few shares to develop its business. If the transaction is on an international scale, it should be considered before agreeing because, of course, the product's price will change at any time.

e. Reputational Risk

Reputation can be defined as the company's good name. So reputation risk is a risk that is closely related to the company's reputation. If the company's good name is destroyed or its reputation is terrible, of course, it will cause considerable losses in the form of customer distrust of the business. If the reputation is damaged, it will cause considerable losses in a short time. Then the workers who work in the company will decrease their morale and even decide to leave the company. It will make it challenging to find new workers and good replacement customers because prospective candidates have heard of the company's poor reputation. Reputational Risk Solutions, namely because of something unexpected, it is better to avoid the risks that may be caused by reputation, must keep all employees to always apply both inside and outside the company.

Always maintain product quality and excellent service, do not be easily tempted by something that seems instant and dubious. Remain loyal to the product and quality provided to customers. In practice, integrated risk management becomes.²⁶

26 Mervat Abdelhak, Sara Grostick & Mary Alice Hanken, *Health Information: Management of a Strategic Resource*, Elsevier Health Sciences, 2014, page. 738.

- a. It ensures that the clinic applies the same system to manage all of its risk management functions, such as patient safety, occupational health and safety, complaints, clinical litigation, employee litigation, and financial and environmental risks.
- b. If considered for improvement, modernization and clinical governance, risk management becomes a critical component for each project design.
- c. Integrate all sources of information related to risk and safety, for example, reactive data such as patient safety incidents, clinical litigation claims, complaints, and occupational health and safety incidents, proactive data such as the results of risk assessments; use a consistent approach to training, management, analysis and investigation of all potential risks and actual events.
- d. We use a consistent approach and unify all risk assessments of all types of risk in the clinic at every level.
- e. Integrate all risks into the risk assessment program and risk register.
- f. Use information obtained through risk and incident assessments to formulate future activities and strategic planning.

Risk identification is an attempt to identify situations that could lead to injury, lawsuits or financial loss. Identification will help the steps that management will take against these risks.²⁷ All staff should carry out a risk assessment, and all parties involved, including patients and the public, can be involved whenever possible. The areas to be assessed are Operations, Finance, Human Resources, Law/regulation and Technology. By knowing the rules of the game that exist in Indonesia, running a health clinic business becomes calmer and can plan for future clinic operations. There is no need to worry about the rules with no clear implementation instructions; always ask the local city/district health office if something goes wrong. It should also be noted that this health clinic business benefits from helping others; it does not mean that this business does not pay attention to the existing rules.²⁸ Obey all the existing rules; then this business will provide abundant benefits for owners and users.

To reduce business risk, can start by making a business contract every time cooperate. In addition, to minimize significant losses related to financial risk, one can also rely on the online accounting software Journal to help manage company finances. Coaching, monitoring and evaluation, which includes organizational performance appraisal and reporting, is a management function that must support the competence of a director of a health clinic. Guidance, monitoring and evaluation are needed to determine and ensure the progress of a program or service

27 Matthias Brinner, Oliver Kessler, Yvonne Pfeiffer, Theo Wehner & Tanja Manser, Assessing Hospitals' Clinical Risk Management: Development of a Monitoring Instrument, *BMC Health Services Research*, Vol. 10, 2010, page. 337.

28 Deen K. Chatterjee (ed.), *Encyclopedia of Global Justice*, Springer Science + Business Media B.V. 2011, page. 316.

activity and to assess the final results of a program or service activity. While reporting is a means for information and accountability for program implementation.

The health clinic director needs to supervise, control, and evaluate all health service activities carried out at the clinic.²⁹ However, due to the limitations of the clinic, evaluation usually focused on activities related to the implementation of the leading clinical program. Coaching, monitoring, and evaluation are part of the supervisory function and are closely related to other modules that strengthen the implementation of all management functions, starting from planning, organizing, mobilizing, and controlling. It is possible that in the implementation of each of these management functions, deviations have been found that need to be corrected/rectified immediately. The objectives of supervision and control include:³⁰

- a. Guaranteeing the activities carried out following a predetermined plan, which includes a standard input.
- b. Provide information to decision-makers about deviations and their causes so they can make corrections to the implementation of related activities or programs, both ongoing and future developments.
- c. Provide information/reports to decision-makers regarding environmental changes that must follow up with the adjustment of activities.
- d. Provide information on accountability for implementation and program/activity performance results to interested parties on an ongoing basis and from time to time.
- e. Information from the results of supervision and control can be the basis for making appropriate and accountable decisions. To ensure better, more effective, and more efficient results or objectives, use resources.

The other objectives of the implementation of supervision and control are:

- a. We are learning to determine whether the program of activities can be carried out well, the causes that can affect it, and how corrections can be made.
- b. To verify and improve program management quality, identify successful strategies for extension/expansion and replication.
- c. To modify less successful strategies.
- d. To measure the success and benefits of an intervention.
- e. To provide information to stakeholders so that the stakeholders to mention the yield and quality of the program.
- f. To provide a justification or validation to donors, partners or constituency concerned.

29 Valorie Dearmaon, *Risk Management and Legal Issue*, Jones and Bartlett Publisher, page. 470-493.

30 Abdul Rachman, Arifin, *Adminitrasi Pemerintah Dalam Pembangunan*, CV. Haji Mas Agung, Jakarta, 2001, page. 56.

D. CONCLUSION

Business actors are accountable for compensation for damage, pollution, and consumer losses created or exchanged, as stated in the Consumer Protection Law's Article 19 paragraph (1). Health service clinics have a legal responsibility to patients as consumers. Other articles related to the provision of health services in the law are Article 8 paragraph (1) and paragraph (3), Article 9 paragraph (1), Article 10, Article 13 (2), Article 15, and Article 18. In addition, according to the Health Law Article 58 (1), everyone has the right to claim compensation for the health service (clinic) if it causes a loss due to an error or negligence in the health service he or she receives. It can also relate to the Medical Practice Law, which contains further information about doctors' and dentists' rights and obligations and criminal penalties for reports of problems between patients and healthcare employees, in this case, doctors and dentists. However, if viewed from the civil, criminal and administrative side, the Minister of Health, which regulates the clinic itself, does not include specifics about the legal responsibilities of the clinic towards patient rights that can be protected concretely in the Indonesian legal system.

BIBLIOGRAPHY

Books:

- Adam Jolly, 2003, *Managing Business Risk*, Kogan Page Publishers
- Arifin Abdul Rachman, 2001, *Adminitrasi Pemerintah Dalam Pembangunan*, CV. Haji Mas Agung, Jakarta;
- Fred Ameln, 1991, *Kapita Selekta Hukum Kesehatan*, Grafikatama Jaya, Jakarta;
- J. Guwandi, 2003, *Dokter, Pasien, dan Hukum*, Balai Penerbit FKUI, Jakarta;
- Mervat Abdelhak, Sara Grostick & Mary Alice Hanken, 2014, *Health Information: Management of a Strategic Resource*, Elsevier Health Sciences.
- Michael Marczak, 2008, *Risk management in health care system-methodology and chosen examples*, Technical University of Lodz.
- Peter Mahmud Marzuki, 2011, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta;
- Soerjono Soekanto & Sri Mamudji, 2001, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Rajawali Pers, Jakarta;
- Valorie Dearmaon, *Risk Management and Legal Issue*, Jones and Bartlett Publisher;
- Krista M. Curell, JD, BSN, 2011, *Grating Risk Management, Quality Management, and Patient Safety into the Organization, in*

Principles of Risk Management and Patient Safety, Editor: Barbara J. Youngberg, Jones & Bartlett Learning, Canada;

Journals:

- Deen K. Chatterjee (ed.), *Encyclopedia of Global Justice*, Springer Science+Business Media B.V. 2011;
- Diwa Agus Sudrajat, Dewi Irawati and Mustikasari, Pemenuhan Hak-Hak Pasien di Sebuah Rumah Sakit di Jakarta, *Jurnal Keperawatan Indonesia*, Vol. 12, No. 2, Juli 2008;
- Elsje Scheffler, Surona Visagie and Margurite Schineider, The Impac of Health Service Variables on Healthcare Access in a Low Resourced Urban Setting in The Western Cape, South Africa, *Afr J Prm Health Care Fam Med*, Vo. 7 No. 1, 2015;
- Gary Marchant, et all, From Genetics to Genomics: Facing the Liability Implications in Clinical Care, *The Journal of Law, Medicine & Ethics*, Spring, Vol. 48, 2020;
- Gayus Lumbuun, Restorasi Hukum Pidana Medik, Nomor 5 Edisi September Tahun 2014, *Media Komunikasi Mahkamah Agung Republik Indonesia*;
- Hui Sang and Jiuqing Cheng, Effects of Perceived Risk and Patient Anxiety on Intention to Use Community Helathcare Services in a Big Modern City, *Sage Journal, SAGE Open*, April 2020;
- I Gusti Ayu Ketut Rachmi Handayani, Pujiyono and Siska Diana Sari, Keadilan Sosial Dalam Penyelenggaraan Klinik Kecantikan di Indonesia, *Citizenship: Jurnal Pancasila dan Kewarganegaraan*, Vol. 7, No. 2, 2019;
- Matthias Brinner, Oliver Kessler, Yvonne Pfeiffer, Theo Wehner & Tanja Manser, Assesing Hospitals' Clinical Risk Management: Development of a Monitoring Instrument, *BMC Health Services Research*, Vol. 10, 2010;
- Muzayanah, Hak Warga Negara Untuk Mendapatkan Pelayanan Kesehatan Berdasarkan UUD Tahun 1945, *Jurnal Pengabdian Kepada Masyarakat Media Ganesha FHIS*, Vol. 1, No. 1, Maret 2020;
- Rapepong Suphanchaimat, Kanang Kantamaturapoj, Weerasak Putthasri and Phusit Prakongsai, Challenges in the provision of healthcare services for migrants: a systematic review through providers' lens, *BMC Health Services Research*, Vol. 15, 2015;
- Setya Wahyudi, Tanggung Jawab Rumah Sakit Terhadap Kelalaian Tenaga Kesehatan dan Implikasinya, *Jurnal Dinamika Hukum*, Vol. 11, No. 3, September 2011;
- Siska Diana Sari, Perlindungan Hukum Bagi Pengguna Klinik Kecantikan Estetika Berdasarkan Perspektif Hak Konstitusional Warga Negara,

Citizenship Jurnal Pancasila dan Kewarganegaraan, Vol. 6, No. 2, Oktober 2018;

Wahyu Rizki Kartika Ilahi, Resiko Medis dan Kelalaian Medis dalam Aspek Pertanggungjawaban Pidana, *Jurnal Hukum Volkgeist*, Vol. 2, No. 2, 2018;

Internet:

Adhitya Himawan, Desember 29th 2017, *Klinik Berperan Perluas Akses Pelayanan Kesehatan Masyarakat*, <https://www.suara.com/news/2017/12/29/110550/klinik-berperan-perluas-akses-pelayanan-kesehatan-masyarakat>, Accessed on May 13th, 2020;

Hardani Triyoga, Februari 16th 2020, *Klinik Aborsi Ilegal di Paseban, Warga: Saya Kira itu Kantor Hukum*, <https://www.viva.co.id/berita/kriminal/1263515-klinik-aborsi-ilegal-di-paseban-warga-saya-kira-itu-kantor-hukum>, Accessed on May 20th, 2020;

Jessi Carina, January 12nd 2020, *Klinik Stem Cell Ilegal di Kemang Patok Harga Rp 230 Juta Sekali Suntik*, <https://megapolitan.kompas.com/read/2020/01/12/15424341/klinik-stem-cell-ilegal-di-kemang-patok-harga-rp-230-juta-sekali-suntik>, Accessed on May 13th, 2020;

<https://kbbi.kemdikbud.go.id/entri/klinik>, Accessed on June 25th, 2020;

The Columbia Electronic Encyclopedia®. S.v. Health clinic. Retrieved August 13, 2020 from <https://encyclopedia2.thefreedictionary.com/Health+clinic>

Medical risk. (n.d.) *Segen's Medical Dictionary*, 2011, Retrieved May 7 2020 from <https://medical-dictionary.thefreedictionary.com/medical+risk>