

## **CO-ASSISTANT LIABILITY (MEDICAL STUDENTS) FOR HEALTH SERVICES: A SOCIO-LEGAL APPROACH**

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### **A. Introduction**

All regulations in the Indonesian Legal System must not conflict with the Pancasila and the 1945 Constitution of the Republic of Indonesia, because the Pancasila and the 1945 Constitution of the Republic of Indonesia are the basis for the establishment of the Unitary State of the Republic of Indonesia (Sutrisno and Akbar, *International Journal of Psychosocial Rehabilitation*, 24(07), 8536). Regulations in health midwives must also refer to these basic norms, for that in providing health services, therefore, in providing health services, it has been guaranteed through the constitution as a human right so that the final goal to be achieved is to increase the degree of public health. This is important considering that the current legal order in the era of globalization has entered all areas of human life, legal issues that have penetrated the non-legal field, namely health, provide formal legitimacy regarding the importance of these aspects of health being regulated. One thing for certain, in a developing society, law becomes a means that cannot be ignored in the development process (Sutrisno, 2009:59). The development process requires the presence of legal norms, and its existence must be able to guard and be at the forefront that provides guidance on the direction of community behavior as legal behavior, in the end the achievement of legal objectives can be achieved in terms of providing guarantees of legal justice, legal certainty and benefits to Public.

The existence of a city in Indonesia caused by the impact of development has required the city to fulfill the interests of people's development. The conflict of new values has affected the lives of the people (Sutrisno, 2019: 758). This condition proves that the rule of law order becomes a corridor that determines the direction of the legal relationship established by relatives. This relationship becomes very important at the time, the focus of the study is determined in the legal relationship between the Co-Assistant (Medical Student) and the Specialist Doctor who gives authority, from this relationship comes the legal responsibility of other relatives.

There is a phenomenon that in the Teaching Hospital, during the learning process, there are often assignments and delegations of authority outside the competencies and obligations of medical students by the DPJP (General Practitioners / Specialists) at the Teaching Hospital. The research questions are what are the rules related to legal responsibility of Teaching Hospital while medical students carry out their duties, and how is the legal analysis of cases of delegation of authority incompetence and rules of the doctor's clinic practice.

### **B. Research Methods**

Social-legal or non doctrinal approach is conducted in this study and refer to law value (unwritten legal form), in this case based on Law Number 29 of 2004 concerning Medical Practices and Government Regulation Number 93 of 20015. Assessing the understanding of specialist doctors and co-assistant students to understand some written legal provisions governing the issue of delegation of authority, resulting in legal relationships that can arise for the parties involved. Understanding, about the value behind the text of the applicable legislation in terms of delegation of authority in its legal arrangement. The paradigm used in this research is the constructivism paradigm. The construction of the legal relationship between Specialist Doctors and Co-Assistant Students is the extent that can be proven empirically, therefore the constructivism approach is widely used in research including research in the field of health law. This type of research is qualitative research, which is intended to understand the phenomenon of the delegation of authority that has been given by a specialist doctor to the Co-Assistant (Medical Student) with regard to things that have been felt and experienced by parties in the research subject, this focuses on how the values can be understood based on applicable legal provisions.

### C. Theoretical Foundation

Teaching Hospital is a hospital that has provided medical education as well as specialist doctors carried out by medical education institutions. The rule of law regulates the issue of medical professional education, namely contained in the legal norms of medical practice. On the other hand, the legal system that regulates Higher Education has explicitly stated that Doctoral Education is education that is held to produce doctors who have the competence to carry out primary health services and constitute basic medical education as a university education. Basic medical education consists of 2 stages, namely the doctoral program stage and the doctor's professional stage. At the medical professional education stage, medical students will be given clinical learning including anamnestic methods and physical examinations, selection of supporting examinations that will help establish a diagnosis or differential diagnosis of disease, management of diseases and complications. Learning objectives are the number of cases to be studied by medical students, the expected level of competence, and the medical students' ethical, moral and professional responsibilities in treating patients as primary care doctors with the competence of doctors regulated by the Indonesian Medical Council. After the student in question has passed S1 at the medical faculty, a Co-Assistant (Co-Ass) will be carried out, which will be carried out in every customary part of the hospital such as surgery, neurology, forensics, etc. and will be carried out for approximately two years. Co-Ass has an internship at the hospital to better introduce the world of medicine to the prospective doctor. This is intended so that later when he is deployed to the medical world it is not really awkward. In this apprenticeship process, prospective doctors will be guided by a supervising doctor who is already an expert in their respective fields.

### D. Discussion

Health services conducted individually or collectively are intended to increase the degree of public health as an effort to prevent and to cure diseases and to restore their health.

The legal relationship construction that is built for medical services is based on an agreement that binds some parties in terms of providing health services and making efforts to treat patients, and leads to the goal of healing the patient to be healthy again. The parties involved in the legal relationship for health services include doctors, midwives, nurses and pharmacists. These parties can carry out health services activities based on legal norms. And the purpose of the regulations is to lead to legal certainty for the parties and for the legal justice, and the relation that is made can provide benefits to these parties.

In the emphasis of socio-legal approach which examines the law from a legal perspective as a social phenomenon, the relation between doctor and patient is a legal medical relationship. For this reason, in the case of carried out medical services construction can lead into legal responsibility and legal consequences if the actions taken result in errors and negligence. If the error or negligence occurs and causes harm to the patient, it is possible for the patient to file a lawsuit in the form of default and illegal acts (*onrechtmatigedaad*) by referring to the legal provisions Article 1365 of Civil Code.

The relationship built by the parties, specifically between Medical Students and Patients are only within the corridor limit as Patients and Medical Students who are positioned as an Intern at the Hospital, who can only perform the tasks that have been given by the Supervisor Doctors, with the task of performing examination during their Co-Assistant, namely supervising, checking blood pressure, measuring patient's body temperature and in certain cases with no fatal consequences medical students allowed to make a mild diagnosis of the patient, if it is possible with the permission of the authorized.

Medical students have not been able to make medical decisions on patients because all actions taken by medical students must be under the knowledge of the supervisor doctors or the person in charge. Especially for medical students, it is not allowed to take medical action, or any decisions related to patients without the knowledge of the doctor or the person in charge. If they violate these provisions, the applicable laws for Medical Students are criminal law (imprisonment or a fine), and civil law (in the form of compensation) according to the applicable law.

In the legal perspective, the violations commonly committed by medical students for example mistaken in prescribing and in taking and examining blood, usually the concerned person will have an added learning cycle in that section or if it is stated that they did not pass the learning process, they will be required to repeat the learning cycle in that part of the specialization.

And if the mistakes made by medical students contained unlawful acts, it can lead to legal consequences for both medical students and supervisor doctors also the hospital. Likewise, even though there is no direct agreement between medical students and patients, medical students who

taken part in the work will also take responsible for acts of default according to Article 1800 and Article 1801 of the Civil Code.

The medical profession is a profession that has noble values for humanity, so that in terms of taking action and the legal relation that is made, it must pay attention to the order, norms, legal rules and code of ethics that apply in society. Based on Regulations number 29 of 2004 concerning on Medical Practice, it has clearly stipulated that primarily a doctor in carrying out his profession must be based on scientific values and competencies that have been passed through the tiered education and based on a code of ethics in public serving.

Basically, a doctor must be able to know and understand the applicable legal provisions as a foundation in carrying out his profession, including regarding the equal rights and obligations.

Based on the Regulations Number 29 of 2004, legal norms concerning on Medical Practice, doctors' must aware and required to understand, as a bearer of rights and obligations both to themselves and to others in carrying out their profession.

Teaching Hospital referring to the legal principles of Government Regulation Number 93 of 2015, explains that a Teaching Hospital is a hospital that has a function as a place for education, research and health services in an integrated manner in the field of medical and/or dentistry education, continuing education and other health related education in a multi-professional manner. Meanwhile, the meaning of educational institutions is tertiary education that provides academic, professional, and/or vocational education in the fields of medicine, dentistry, and/or other health related. The students are medical students, dentistry students, or other health related students in academic, professional, and vocational education who fulfills their clinical learning in teaching hospitals.

A medical student or Co-Ass or Co-Assistant is a person whose job is to assist others in carrying out professional tasks, for example in work, profession and service.

Co-Ass is a student who is still in the education stage to meet competencies before being declared a doctor. Teaching hospital is a public hospital that is used by medical or dentistry faculty in fulfilling part or all of curriculum in helping the achievement as a doctor in the hospital having an obligation to study for two years or in accordance with the clinical stage stated in the medical profession competency learning draft. During their time in the teaching hospital, medical student is under the Education Coordination Board or P3D (Doctor Education Program), which is a coordinator between teaching staff at teaching hospitals and medical faculty institutions. During the educational program at the Teaching Hospital, medical students carry out their academic responsibility. Medical students' rights and responsibilities are stated in the Clinical Clerkship Manual Syllabus Book, and during their study period, medical students will be given guidance by their supervisors in accordance with their Clinical Education Stage. Supervisors are none other than general practitioners and specialists who are responsible for providing guidance and supervision during the learning process.

As a concept of public law, authority consists of at least three components, which are influence, legal basis, and legal conformity. The authority is used to control the behavior of legal subjects, which must always show the legal basis of that authority. Legal conformity in authority means that there are standards of authorities, both general standards for all types of authority and specific standards for certain authority.<sup>4</sup>

The characteristics and source of authority divided into two, namely attributive authority and non-attributive authority.

1. Attributive authority is an inherent authority that is given directly by law. The inherent attributive authority in doctors is medical practice as stated in Regulations Number 29 of 2004 concerning on Medical Practice.
2. Non-attributive authority is the authority given by someone who has higher authority or competence to someone who has lower authority or competence. This authority is only temporary. Non-attributive authority is divided into two types based on accountability, namely:
  - Mandate is the authority given by a doctor or specialist to the recipient of the mandate without eliminating the doctor's legal responsibility. The mandate holder only acts for and on behalf of the mandate, the final responsibility for decisions taken by the mandate remains with the mandate.
  - Delegation is the authority given by the doctor to the recipient along with doctor's legal responsibility. During this process there is no invention of new authority, there is only authority delegation from one doctor or specialist to another recipient. Juridical responsibility will no longer rest with the delegate but shifts to the one who receive of the delegation.<sup>5</sup>

## E. Conclusion

Doctor is a profession that has a Doctor Registration Certificate and is registered in KKI because it has taken the academic and professional stages of education. A medical student is someone who is at the Professional Education stage to become a doctor and does not have the same authority as a doctor or specialist. The authority delegation from doctors to medical students is non-attributive in nature, the authority given by doctors to medical students is a mandate, authority is given from a higher level of competence to a lower level of competence, and the responsibility falls under the mandate. The mandate given by a doctor or specialist to medical students aims to provide learning facilities in hospitals and is not permanent. The mandate given is in accordance with the guide in clinical clerkship logbook and the medical student curriculum during their professional education at the Teaching Hospital.

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