



## Hospital Criminal Liability as a Corporation of Patient Rejection in Infected with Covid-19

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Article	Abstract
<p><b>Keywords:</b> Hospital criminal liability; corporation; patient rejection; covid-19.</p> <p><b>Article History</b> Received: May 11, 2020; Reviewed: June 5, 2020; Accepted: July 28, 2020; Published: Sept 30, 2020.</p> <p><b>DOI:</b> <a href="https://doi.org/10.22219/ljih.v28i2.12168">10.22219/ljih.v28i2.12168</a></p>	<p><i>One problem that has recently discussed is that there are hospitals that reject patients infected with COVID-19. COVID-19 has become a pandemic outbreak designated as a national disaster by the Government of Indonesia. Hospital administration in modern times is not as simple as it used to be. The need to manage hospitals with business principles is undeniable. Based on this paper, the research problem formulated is the criminal liability corporation of hospitals towards the rejection of patients infected with COVID-19. The method used in this research is normative juridical research (doctrinal research). The approaches used are case approach and statute approach. The outcomes indicate that based on Law Number 36 of 2009 concerning Health clearly said that hospitals are restricted to reject patients who need help. Hospitals as a corporation can be demanded criminally liable by using the doctrine of strict liability, namely criminal liability sans error. In this research, if the corporation that has committed a prohibited act as formulated in the law can already get sentenced without questioning whether the offender has an error (mens rea) or not.</i></p>

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### INTRODUCTION

Started from Wuhan city in China, a new type of coronavirus spread to various countries in the world and caused the emergence of COVID-19 disease. Around March 11, 2010, COVID-19 was declared a pandemic by WHO (World Health Organization). This condition clearly should not be underestimated because there are only a few diseases throughout history are classified as pandemics such as influenza, swine flu, and HIV/Aids (Shereen, Khan, Kazmi, Bashir, & Siddique, 2020; Syah, 2020; Telaumbanua, 2020).

The Indonesian government announced on March 2, 2020, that 2 Indonesian citizens were confirmed corona positive after having contact with a Japanese citizen who was confirmed infected with coronavirus at first. By April 2020, there were already approximately 10,000 people infected with coronavirus. Hence the National Disaster Management Agency (BNPB) established the COVID-19 pandemic as a national disaster. However, several hospitals designated to handle the COVID-19 outbreak had refused to treat infected patients.

As a case experienced by a woman who got rejected by the hospital even though she was categorized as a Patient Under Supervision (PDP). The female patient claimed that she was under the PDP status but the hospital she visited refused to treat her and only advised to go directly to another hospital without supervision (Nursaniyah, 2020). A government spokeswoman for COVID-19 prevention said many hospitals are rejecting COVID-19 patients. Some hospitals want to maintain the image of “Do not get caught treating COVID-19 patients, or else other patients will not want to come, this is a business” (Nugraheny, 2020). The idea mentioned before is following Kartono Mohamad's opinion, stating that the operation of hospitals in modern times is not as simple as it used to be. The need to manage hospitals with business principles can no longer be denied (Njoto, 2011).

Following the ideals of the Indonesian nation as referred in the “Pancasila” and the 1945 Constitution, health is a human right and one of the elements of welfare that must be actualized in the form of providing various health attempts to the whole community through the implementation of quality and affordable health development (Law Number 36 of 2009 concerning Health and Law Number 29 of 2004 concerning Medical Practices). Article 1 point 1 of Law Number 44 concerning Hospitals provides an understanding of hospitals, namely health care facilities providing exhaustive individual health services that provide inpatient, outpatient, and emergency services.

Furthermore, the obligation to accept and treat emergency patients, in this case, a patient infected with COVID-19, is already regulated under the Minister of Health Regulation No. 40 of 2012 concerning Guidelines for Implementing Health Insurance Programs. Chapter IV Point 3 regulates that under an emergency situation, all health facilities whether the community health insurance or *Jamkesmas* network are required to provide first handling services to *Jamkesmas* participants or not. Health facilities outside *Jamkesmas* network services are part of the social health function, then these health facilities can refer to the *Jamkesmas*'s health facilities for further treatment.

The previous argument is following Government Regulation No. 4 of 2018 concerning Hospital Obligations and Patients Obligations Article 8 that reads:

1. Obligations Hospitals must play an active role in providing health services in disasters following their service capabilities as referred to in Article 2 Paragraph (1) letter d, including the obligation to provide health services in other Health crises following service capabilities;
2. Health Crisis as referred to in Paragraph (1) is an event or series of events that threaten the health of individuals or communities caused by Disasters either or both potentially Disasters;
3. The obligation to play an active role in providing health services to Disasters by their service capabilities as referred to in Paragraph (1) shall be carried out through: a). the formation of a disaster emergency response team to create and implement disaster management; b). provide direct services to disaster victims at the disaster site or the hospital; c). mitigating the impact of disasters through the provision of psychosocial and physical rehabilitation services; and
4. Hospitals in providing health services to Disasters as referred in Paragraph (1) are prohibited from rejecting the Patient either or both requesting advance payment.

Moreover, Article 5 Paragraph (1) letter b of Law Number 4 of 1984 concerning Infectious Disease Outbreaks assures that one of the attempts to deal with outbreaks is an examination, treatment, care, and isolation of patients, including quarantine measures. Based on the previous elucidation, the National Disaster Management Agency (BNPB) established the COVID-19 pandemic as a national disaster. However, some hospitals refuse to help out COVID-19 patients, not according to the procedure for not providing a letter of introduction and determination in which hospitals can provide. On the other hand, the hospital ought to provide health services.

Furthermore, it is seen based on Article 32 paragraph (2) Health Law Number 36 of 2009 that reads, "In an emergency, health service facilities, both Government Hospital and Private Hospital are prohibited from rejecting patients either or both requesting advances". Then it was strengthened by Article 190 Paragraph (1) that reads, "The head of the health service facility either or both health workers who infringe Article 32 Paragraph (2) will get sentenced to a maximum 2 years of imprisonment and a maximum fine of IDR. 200,000,000". Article 190 Paragraph (2) reads "If causing disability or death, sentenced to a maximum imprisonment of 10 years and a maximum fine of IDR. 1,000,000,000".

The problem of hospital corporate criminal liability arises because the hospital should provide assistance to save patients without concerning about maintaining the hospital image. In this case, the hospital as a corporation has indirectly committed a crime. If this case is settled in court, remember that the hospital needs to provide care for the community as health services users. Based on the background described above, the problem that will be discussed in this article is related to the corporate

criminal liability of the hospital for the rejection in treating patients infected with COVID-19.

Based on the background above, the authors conducted a literature search, information sources, and the internet, research that has focused the study of Hospital Criminal Liability as a Corporation of Patient Rejection in Infected COVID-19 until now not yet been found. Therefore, the contribution of this study will discuss how the corporate criminal liability of hospitals against the rejection of patients infected with COVID-19.

## METHOD

This research is an activity carried out to understand and solve problems scientifically, systematically, and logically. A study was initiated because of the gap between *das sollen* and *das sein*, that is, between existing theories and realities that occur in the field. The method used in this study is normative juridical research (doctrinal research) given the problems being studied and studied in addition to hold onto juridical aspects based on norms, regulations, and legal theories that will produce a systematic explanation of the legal rules governing a particular legal category (Rofiq, Disemadi, & Jaya, 2019). The approach to be used is the statute approach. In other words, this research does not only refer to the applicable legal products but also based on the reality that is happening in the field. The statutory approach is used to assess the problem normatively both from the perspective of *ius constitutum* and *ius constituendum* related to hospital corporate criminal responsibility. The specifications used in this study are analytical and descriptive because this study is expected to obtain a clear, detailed, and systematic picture. The analytical specification is done by analyzing collected data in solving problems following applicable legal provisions. The purpose of the study uses descriptive-analytical specifications to provide a visualization of reality as objectively examined objects.

## RESULTS AND DISCUSSION

### Hospitals as Corporations and Criminal Law Subjects

A hospital is an organization that provides public services that have responsibility for every health service it provides. That responsibility is providing quality health services at affordable prices based on the principles of safe, comprehensive, non-discriminatory, and participatory, as well as protecting the community as users of health services (health recipients), also for health service providers to realize the highest health state of affairs (Buamona, 2017).

In legal science, legal subjects known as rights and obligations holders consisting of humans (*natuurlijke persoon*) and legal or corporate bodies (*recht persoon*) (Jamilah, et al., 2020; Rahmadia, et al., 2020; Sembiring & Pujiyono, 2020). Hospitals can be said as legal subjects because they can be considered to support rights and obligations in conducting legal relations and can also be considered as legal entities,

namely “corporations” where there are facilities and infrastructure as well as humans as medical personnel so that their position can be prosecuted both in civil, administrative and criminal law (Disemadi & Jaya, 2019).

Article 7 Paragraph (3) of Law Number 44 of 2009 concerning Hospitals states that hospitals may be subject to criminal law, namely corporations in the form of legal entities. Hospitals as criminal law subjects are distinctive (special legal subjects). The specificity of the hospital legal subject in criminal law, that is, it cannot carry out criminal acts that are personal and applicable to functional criminal violations. Functional criminal acts are crimes caused by companies that do not perform certain functions as required/required by law. The organization of hospitals as a corporation through Law Number 44 of 2009 concerning Hospitals aims to provide a legal basis for prosecuting hospitals when committing criminal acts (corporate crime).

Hospitals as corporations have not explicitly affirmed under the Law Number 44 of 2009 concerning Hospitals. Previously the definition of a hospital was contained in Article 1 Paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia Number 1045/Menkes/Per/XI/2006 stating that hospital is an individual health service facility that provides inpatient and outpatient services that provide long-term health services consisting of observation, diagnostic, therapeutic, and rehabilitative for people who suffer from illness, injury and childbirth. In contrast to the provisions in Article 1 Number 1 of Law Number 44 of 2009 in which defines hospitals as health care facilities that provide complete individual health services that provide inpatient, outpatient, and emergency services.

Based on previous elucidation, at least two main features of an institution obtain the function of an organization and a public sector developer (Chandra, 2017; Qudus & Pujiyono, 2019; Sari & Jaya, 2019). Thus the hospital is an organization engaged in the field of public services, specifically health. Corporations are man-made products to engage with other human beings to fulfill certain goals (Arifin, 2016; Pamungkas & Imron, 2020). The definition of the corporation in the Black's Law Dictionary describes the corporation as: “An entity (A business) having authority under the law to act as a foreign person is distinct from the shareholders who own it and have rights to issue stock and exist indefinitely; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has a legal personality distinct from the natural persons who make it up, exist indefinitely apart from them and have the legal powers that constitution gives it” (Garner, 2004).

The hospital as a health service institution has experienced several developments, including:

1. Hospital as a charitable institution (Charitable Corporation). The existence of the hospital primarily intended as a charitable institution that treats people who are

- diseased and socially incapable. As an institution devoted in handling health services, the hospital was formed to provide health services for financially less able people. Hospital as a charity institution at that time only provided space, food, and limited care that was also carried out by volunteers;
2. Hospitals as social institutions (labor intensive and capital intensive). Technological developments in the field of medicine turned out to have a significant impact on the form of health services offered by hospitals. Hospitals are no longer just treating diseased people for free but have become an institution or social institution that is capital intensive, labor-intensive, and various parties involved in it so that health services at hospitals are progressively complex (Christianto, 2011);
  3. Hospital as a business entity. The development of a hospital as a business entity is inseparable from the development of economic activities in the service sector. Hospitals can be referred to as business operators providing services while patients as the consumers as stated under Law Number 8 of 1999 concerning Consumer Protection. This means that the hospital, in addition to carrying out health service activities, also considers the benefits of doing business.

These characteristics are considerably following the objectives of corporate activities that prioritize profits in running their businesses. When hospitals, on the one hand, must prioritize health services, they also need to look for profit that will create a dilemma for health workers. Article 21 of Law Number 44 of 2009 concerning Hospitals precisely emphasizes the development of the function of the hospital in addition to providing health services also aimed for professional purposes. Sujudi at the National Seminar and Workshop of Proactid Hospitals in the Globalization Era reminded that the performance of Hospital Services both Government and Private in the Liberalization of Health Services in urban areas tended towards the market mechanisms orientation (Chaeria, Busthami, & Kadir, 2020; Wahjuni & Sari, 2017).

### **Hospital in Corporate Criminal Liability**

Corporate criminal liability in modern criminal law theory can be filed or prosecuted under criminal law. Several doctrines can be used as the main foundation to justify corporations. Where hospitals burdened with criminal liability, as well as teachings related to criminal liability and the error theory pedagogy, no criminal act or there is no accountability without error, and mistakes breed arbitrariness (*dolus*), as well as accidental or negligent (*culpa*) (Qudus & Pujiyono, 2019; Rahmadia et al., 2020; Sembiring & Pujiyono, 2020). Criminal liability must first know who is accountable for the criminal act. That means it must be confirmed in advance who is the person declared as the actor of a crime. This problem concerns the subject of criminal offenses which in general have been formulated by lawmakers for the relevant crime (Agustina, Prasetyo, & ., 2018; Sari & Jaya, 2019; Suhariyanto, 2017).

Based on the theory in criminal law, there are two criteria to determine corporations as perpetrators of crime, namely the Rolling Criteria and the Iron Wire Criteria. According to the Rolling Criteria, corporation criminal liability can be restrained if the prohibited conducting the context of carrying out corporate duties or to achieve corporate's objectives. Whereas the Duri Wire criteria, corporations can be imposed with criminal law if they meet two conditions, namely: 1) the corporation has the power (*de jure* or *de facto*) to prevent or stop the plaque in performing deeds prohibited by law; 2) corporations accept the actions of the perpetrators (acceptance) as part of the corporate policy (Widowaty, 2012).

The legal responsibility of hospitals in the implementation of health services toward patients can be seen from the aspects of professional ethics, discipline, and specifically criminal law related to medical actions that are suspected of medical errors or other medical services that are not carried out by all elements of health care properly including rejection to treat patients during a pandemic outbreak condition. The law allows patients to prosecute crimes to hospitals as health care providers. In which in line with the provisions of Article 32 letter q of Law Number 44 of 2009 concerning Hospitals which states that every patients has the right to sue the hospital, if the hospital is suspected to provide services that are not in accordance with both civil and criminal standards that exist in the provision of providing health services.

Furthermore, it is seen based on Article 32 Paragraph (2) Health Law Number 36 of 2009 that reads in an emergency, health service facilities, both Government Hospital and Private Hospital are prohibited from rejecting patients either/both requesting advances. Then it was strengthened by Article 190 Paragraph (1) reads that the leadership of a health service facility either/both health worker who violates Article 32 Paragraph (2) sentenced to a maximum of 2 years imprisonment and a maximum fine of IDR. 200,000,000. Article 190 Paragraph (2) reads if causing disability or death, sentenced to a maximum of imprisonment of 10 years and a maximum fine of IDR. 1,000,000,000.

It should be noted that the position of the hospital in the legal facet nowadays is exceptionally different from the previous standing. In which the hospital cannot be held liable, particularly under criminal law, because the hospital is still considered as a social institution (doctrine of charitable immunity). Which if requested to criminal liability, it will narrow the ability to assist patients.

But in its development, the corporation was not only engaged in the economy, but now the scope is increasingly expanding, such as covering education, health, research, government, social, cultural, and even religious. Because the development and growth of a corporation can have a negative effect, the position of the

corporation begins to shift from the subject of ordinary law to the criminal law subject (Disemadi & Jaya, 2019; Sari & Jaya, 2020; Siahaan, 2018).

The argument mentioned above is in line with the development of criminal law in other countries such as the Netherlands and France, where both countries have implemented criminal liability towards corporations (Krismen, 2014; Septiawan, et al., 2019). Criminal provisions outside the Criminal Code continue to develop and have expanded the subject of perpetrators of crime, that is, not only limited to humans but also corporations (Sari & Jaya, 2020).

Muladi also explained what if the criminal act was a corporation or legal entity (*recht person*). Without clear specifications or identities, then the decency problem of whom the maker will arise, and this problem carries a consequence regarding the issue of corporate criminal liability (Muladi, 2010). Regarding the position as the maker and nature of corporate criminal liability, the corporate responsibility model is as follows: a). Corporate management as the maker and responsible manager; b). The corporation as a responsible maker and administrator; c). The corporation as a maker and also a responsible corporation.

There are several theories, and many have adopted as theories used to assess corporate criminal liability, including:

1. The Doctrine of Strict Criminal Liability (strict liability). Corporate responsibility is based solely on the sound of the law apathetic to who caused the mistake (Sembiring & Pujiyono, 2020; Suhariyanto, 2017). This theory is another example of the corporate criminal liability theory adopted directly from civil law (Sari & Jaya, 2020). For example, the application of the strict liability-doctrine is a traffic violation where the motorized driver who does not stop when the red light is on, will be ticketed by the police officer and sent to a court hearing. Supporting the implementation of strict liability pedagogy with certain restrictions on particular criminal acts;
2. The doctrine of vicarious liability. The vicarious liability doctrine is following the principle of “employment principle”. The employment principle, in this case, means that the employer is mainly responsible for the actions done by the workers or employees. In this case the “servant's act is the master act in law” principle, or also known as the agency principle that refers to the company’s liability towards the wrongful acts done by its employees (Sjahdeini, 2006; Yusyanti, 2019);
3. Doctrine of Identification (direct corporate criminal liability). That to be able to criminally reckoning to a corporation must be able to identify who committed the crime and if the crime was committed by those who are operating the corporation, then the responsibility of the crime can be borne by the corporation (Bawole, 2013; Muladi, 2010; Sari & Jaya, 2020). The theory of identification acknowledges that the actions of particular corporation members, if related to the



- corporation, are considered as responsible actions done by the corporation itself; and
4. The Doctrine of Delegation (doctrine of delegation). The basis for the imposition of criminal liability on corporations in consonance with this doctrine is the existence of delegation from one person to another to carry out the authority they have. Although a person gains the trust of a delegate from his superiors and commits a crime, the authority grantor (corporation) must expect the occurrence of criminal liability because there is a link between the action and the scope of the corporate worker. That can be understood because the things (doings) entrusted by the employer (corporation) are things usually must be done by the employer but mandated to the workers (Jamilah et al., 2020; Muladi, 2010; Suhariyanto, 2018).

When looking at legal subjects consisting of people (*natuurlijke persoon*) and legal entities (*recht persoon*) as in the pedagogy of criminal law that bears rights and obligations, as well as looking at the various doctrines above (particularly the doctrine of strict liability) (Sari & Jaya, 2020; Yusyanti, 2019), although corporate hospitals are not direct crime makers, corporate criminal liability can occur. Moreover, provisions concerning the prohibition of hospitals rejecting patients contained in Law Number 36 of 2009 regarding Health. *Videlicet* in Article 32, which reads: 1). In an emergency, health service facilities, both government and private, must provide health services in saving the lives of patients and preventing disability first; and 2). In an emergency, health service facilities, both government and private, are prohibited from rejecting in treating patients either/both asking for a down payment.

The article also contains criminal provisions. *Videlicet* contained in Article 190 that reads: 1). The head of a health service facility either/both health worker who performs practice or work at a health service facility that intentionally does not provide first aid to patients who are in an emergency as referred to in Article 32 Paragraph (2) or Article 85 Paragraph (2) shall be sentenced to a maximum imprisonment of 2 (two) years and a fine of no more than IDR. 200,000,000.00 (two hundred million rupiahs); and 2). In the event that the acts referred to in Paragraph (1) result in disability or death, the head of the health service facility either/both the health worker shall be sentenced to a maximum imprisonment of 10 (ten) years and a fine of no more than IDR. 1,000,000,000 (one billion rupiahs).

## CONCLUSION

Law Number 36 of 2009 concerning Health clearly stated that hospitals are prohibited from rejecting to assist patients who need medical aid, particularly in this case. The patients associated with the COVID-19 pandemic in which BNPB has designated as a national disaster. The hospital must not reject any patient for no apparent reason. If there is also a referral, it is delivered and monitored until the patient gets a replacement hospital. Hospital criminal liability as a corporation, in this

case, is closely related to the doctrine of strict liability, namely criminal liability sans error. In this case, if the corporation that has committed a prohibited act as regulated under the law can already be convicted without questioning whether the offender has an error (*mens rea*) or not. Therefore, a corporation committing a crime that complies with the regulations within the law must or absolutely be convicted. Thus the hospital as a corporation can be held accountable for criminal liability. Hospitals (as corporations) should not only consider the benefits of providing services. Firm and definitive laws must be established so that hospitals as corporations can be held criminally liable by not hiding behind the provision of health services.

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