

Realization of the Hospital's Social Functions (Dilemma of the Fulfilment of Hospital's Obligations and Poor Patient's Rights)

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Abstract: Social right in health service is a basic right that is based on human rights. In health service, this right is manifested in the form of social right to get the optimum degree of health such as a right of health care to the poor. The government is obliged to preserve this right and manifest it into policies of health services. Some acts are issued such as Act No. 36/2009 on health and the regulation that particularly regulate this matter, namely public health ministerial decree; Act No. 44/2009 on hospital is factually the forms of the government's obligation that accommodate the social right in health service, especially in the social function. The methods of socio legal approach are chosen with the qualitative analysis because the main problems of the research are the social aspect of hospital service to influence the regulation (legal aspect) of hospital health services to the poor. However, in health service, the social function of hospital fulfillment tends to move to the commercial function. The multiplier effect of hospital services quality ensure was higher cost needed because of medical technology, professional keeper aims and other hospital facilities need higher costs too. Therefore, there is a dilemma between an obligation to hospital social function and the hospital services quality ensure. The dilemma has impact to the patient's right on health care particularly the right of the poor's health care. Whereas the individual right to get health service (in hospital) is also a basic right that is based on human rights. This right should be respected and highly supported as it is entrusted by the act. The crash of these interests requires gives priority to the social interests over the business interests. This means that hospital health service as entrusted by the act is required to be higher carrying to the poor patient's in order to prevent the social function of hospital health services from being contaminated by commercial services.

Key words: Hospital, social function, obligation, the poor, patient rights, commercial services

INTRODUCTION

People's right to get health care service is the basic right that should be guaranteed. The government should be responsible for fulfilling this basic right. The 1945 Constitution after the fourth amendment arranges this in Article 28 H Section 1 which states "Every person is entitled to having a prosperous life physically and spiritually and has the right to have health care services". This constitutional mandate is further arranged in various statutory provisions. Act No. 17/2007 about National long-term development plan years 2005-2025 in the appendices Chapter IV.1.2 decides the target, stages and priority of the long-term development plan which is "becoming a competitive nation". This program contains the plan of "building qualified human resources" with the following agenda: "Developing health is directed to increase awareness, willingness and ability to live healthily for every person so that the maximum increase of the people's health level can be realized (Ibrahim *et al.*, 2015; Kusoom, 2016). Health development is done based

on humanity, empowerment and independence, fairness and equitability as well as priority and benefit with special attention to susceptible people such as mothers, babies, children and old people and poor families (Sungkhapong *et al.*, 2016; Goyal and Goyal, 2015). Health development is done through the enhancement of health efforts, health financing, human resources in health sector medicines and health supplies which go along with better supervision, people empowerment and health management".

The above statement means that one responsibility of the government in the health sector is guaranting the availability of health care services which are qualified, equal and affordable for all social classes, especially the low class society. Thus, a prosperous society will be created and the target of preparing a qualified and competitive generation will be realized.

Related to this, the government of Indonesia has made some policies in health development which can be found in National Health System (NHS). In this policy, it is mentioned that health development is part of national

development which aims to increase the awareness, willingness and ability to live in a healthy way for every person so that the highest level of the people's health can be realized. Health development is Indonesia's potential, both in private and governmental sectors (Presidential Regulation No. 72/2012).

When Act No. 36, 2009 about health (later called health act) and Act No. 44, 2009 about hospital (later called hospital act) were issued, this is actually a form of how the mandate of the 1945 constitution is done which is to get the highest level of the people's health. In fulfilling the people's right to get health care services, the government sets the base and goal of the health act as formulated in Article 2 that: "Health development is done based on humanity, balance, benefit, protection, respect to rights and obligations, justice, gender and nondiscrimination, religious norms".

The regulations actually confirm that health is the elaboration of human rights which need to be guaranteed in the form of acts. The implementations are arranged to gain the expected health level in various activities (system) of health care services. In order to do this, basically there are (three) main things in health care service activities which are health efforts, human resources in the health sector and health care service facilities.

A hospital is one of the facilities in health care services which has a very important function to fulfill the people's right to live a prosperous and healthy life. In practice, the health care services given by a hospital are activities of outpatient care, hospitalization care and emergency care which involve medical care and supports. It is also important to understand that the activities of health care services done by a hospital are the government's activities in fulfilling the people's right which is in fulfillment of the optimal health level as arranged in health act.

In implementing the main task to give health care services, now a days hospitals find it impossible to base it only on humanity because of the influence of several factors, particularly the high cost technology. Nevertheless a hospital as the unit implementing public service must exercise its humanity function according to hospital law which is to do the social function of a hospital.

The arrangement of the social function of a hospital in hospital act is intended to fulfill the right of health care services for poor patients. Therefore, it is interesting to do an analysis of this, especially that related to the function shift of a hospital in which there is a dilemma between the obligations of a hospital (focusing more on the quantity

of health care services) and the poor patient's right to get the best health care services (focusing more on the quality of health care services).

MATERIALS AND METHODS

Problems: Act No. 44, 2009 about hospital contributes to hospitals exercising their various obligations, one of which is the hospital's social function. This act clearly mentions the instruction mentioned in Article 29 Section 1 letter f which states that "Every hospital has the obligation to exercise their social function by giving service facilities for poor patients, emergency care services without down payment, free ambulance, services for victims of natural disasters and extraordinary events, social services for a humanity mission". Hence, in this article the problems analyzed can be identified as follows: How is the hospital's obligation of the social function implemented to fulfill the poor patients' right to get health care services?

The research method used is sociological juridical method with the specification of analytical description and the analysis method is qualitative because this study will only give a description about how the social function of a hospital is implemented in fulfilling the poor patient's right.

Health care services and hospital's obligations in giving health care services:

Health care services basically is an effort to increase the health level, both individually and in group or the society as a whole. In the effort to increase the health level, health care services can be understood by Lavey dan Loomba as quoted by Komalawati to be each effort to increase and keep health, prevent diseases and cure as well as have health recovery which is intended to individuals or social groups (Komalawati, 1999). On the other hand, literally speaking, health care services are efforts done to keep public health which is done by many means which are the health care service institutions, human resources in health care services, the management system of health care services, health economics, health technology and the policies or politics of health. According to Verbogt and Tengker (1984) health care services are services given directly and can be professionally accounted for to individuals in relation to their health spiritually and physically. As commonly done by people, the services can not only be preventive and curative but also supportive (Verbogt and Tengker, 1984).

The statements above contain a wide understanding of the health care services which includes various actions

such as promotive, preventive, curative and rehabilitative ones, both done by individuals and by organizations and done to the society or to individuals. Consequently, based on who the health care services are intended to it can be differentiated between public health care services and individual health care services. Individual health care services are better known as medical services since, the services mostly include the curative and rehabilitative efforts which are done by those in the medical profession. On the other hand, those giving the health care services to public are sometimes just called health service. A hospital has the task to give the complete health care services which cover the preventive, promotive, curative and rehabilitative services.

The definition of a hospital is mentioned in Article 1 No. 1 of hospital act that: "A hospital is a health service facility which gives complete health care services to individuals and which provides hospitalization, outpatient and emergency care". Croford Morris and Alan Moritz define hospital as follows:

- "A place in which a patient may receive food, shelter and nursing care while receiving medical or surgical treatment
- An institution for the reception, care and medical treatment of the sick or wounded also the building used for that purpose
- A place where medicine is practiced by physician" (Croford and Alan, 1982)

The definition of a hospital which are put forward in several references generally mentions that what is called a hospital usually contains such elements as "building" (the physical building) and other means like patients and doctor forms of services, people's sick condition, medical treatments and actions in the form of professional practice. Furthermore, based on Picard's opinion it is said that hospital is defined as:

"The hospital in former times a place where the impoverished ill were deposited or medical attendance has evolved to an institution where the doctor can treat his patient with the assistance of highly skilled and well-organized medical and nonmedical personnel with sophisticated equipment in modern facilities. Just as the function of the hospital has expanded so is its responsibility to the patient. These responsibilities may be characterized as non-delegable duties owed to the patient and failure to discharge them properly may result in an action against the hospital for breach to contract or negligence" (Picard, 1984).

The definition put forward by Picard is slightly different although, the elements mentioned are in fact the

same. The definition is based on the history of hospital management. A hospital is even defined as a place full of technological development, a place with sophisticated equipments and modern facilities. This is why a patient has the obligation to pay for the service cost given by the hospital. This implies that the service cost becomes the patient's obligation. However, in certain cases this obligation cannot be given to the patients if caused by the violation of the hospital contract or because of negligence done by the hospital. This opinion can generally be considered logical because a hospital, hospital activities and hospital's obligations are inseparable factors. Hematram Yadav in his book "Hospital Management" defines hospital as follows:

"Hospital means different things to different people. To the patient it is place to receive medical care, to the physician it may be workplace to practice the profession and to the medical or nursing student it may seem to be an educational institution" (Yadav, 2006).

This definition explains that hospital can be interpreted or defined into several things, depending on the perspective used. Hospital according to Meijer is:

"Het ziekenhuis is een onderneming met een eigen karakter: het is gericht op medisch onderzoek en medische behandeling van opgenomen patienten. Het ziekenhuis is geen onderneming in de zin van een bedrijf dat is gericht op het maken van winst of enig vermogensrechtelijke voordeel" (Soekanto and Herkutanto, 1987).

Literally translated, the definition says: hospital is a business venture which has its own characteristic. Hospital is intended to give medical treatment and medical action for the patients being hospitalized. A hospital is not a business in the sense that it is founded to gain profits from the activity based on property law.

Another, definition of hospital is put forward by Magula as quoted by Dahlan as follows: "a workplace full of problems as a result a problem-solving system is required. An essential public facility which represents the investment of human resources, capital and other resources in order to give critical services for the society. A working process of an organization whose inputs are in the forms of personnel, equipments, capital, information and patients to be processed through the organization working process, resource allocation, coordination, psycho-social interaction, the result of which will then be given back to the surrounding in the form of finished outputs; besides, a hospital must still keep the identity and integrity as an everlasting system".

Based on the definitions given by several experts above, basically the elements found in the definitions of

hospital are the same which are an institution an organization a place and a system. It can be more clearly concluded that a hospital is a big institution a complicated institution an institution which needs some means and infrastructure and a big capital a physical building to do activities with sophisticated technological equipments where sick people get treatments; a place where the professionals do the professional practice, education and training for medical students and medical personnel a place for research and doing scientific development in the health area a complex organization; needing a lot of human resources; having social and humanistic missions, arranged in a set of law and regulations a dynamic and adaptive system because it has to interact continuously with the external, social and organizational surroundings.

Based on the definitions above it can also be said that defining a hospital is actually dependent on the perspective of the interests. This is not wrong because in reality a hospital has many functions so that the definition is closely related to the functions.

In the hospital act, the obligations concern the legal obligations related to the patient's rights, the obligations of an act in its position as an institution of public service the ethical obligation, the obligations connected with the medical personnel professionals which become its responsibility and the social obligation (social function). The hospital act clearly arranges the hospital's obligations in relation to the social function as well as its obligations to the poor patients as stated in Article 29 Section 1 of hospital act that: every hospital has the obligations.

Letter b to give health care services which are safe, qualified, non-discriminative and effective with the patient's interest as the main priority and in accordance with the hospital standard of service; letter d to provide the means of services for people who are financially incompetent or poor letter e to exercise the social function by giving the facility of health service to poor people, giving emergency care without any downpayment, free ambulance, services to victims of natural disasters and extraordinary events or social services for humanistic mission; letter f to make, do and keep the quality standard of the health care services of the hospital as a reference for serving patients; letter l to respect and protect the patient's rights; letter m to apply the hospital's ethics; letter o to apply the government program in the health sector, both regionally and nationally.

Moreover, the patient's rights related to the social function of a hospital are formulated in Article 32, hospital act which states: "Every patient has the rights: letter c to get a service which is human, fair, honest and

non-discriminative; letter d to get qualified health care services which are in accordance with the profession standard and standard operation procedures; letter e to get effective and efficient services so as to make patients prevented from physical and material losses; letter n to get self security and safety during hospital treatments".

Based on the regulations about the patient's rights above what is related to the services for poor patients is those focusing on the quality of the services. Thus, in principle, poor patient's rights are the same as other patient's in general, namely getting the best services which are humane, honest, fair, non-discriminative, qualified, effective, efficient, secured and safe.

RESULTS AND DISCUSSION

Poor patient's right as the basic health right: "Every person has the right to have optimal health as arranged in Article 4 health law. It is explained that what is meant by the right to health is the right to get health care services of the health service facilities in order to achieve the highest level of health". In addition, the right to health related to poor patients can be seen in the regulations in Article 5 and 6 which state:

Article 5:

- Every person has the same right in getting access to the resources in the health sector
- Every person has the right to get health care services which are safe, qualified and affordable
- Every person has the right to decide on their own and in a responsible way the health care services that are required

Article 6: Every person has the right to get a healthy environment to fulfill the health level. This means that the right to a prosperous and healthy life is everyone's right without any exception, including poor patients. Basically, the basic right to health refers to the right to health care. What is meant by health care is that it has to meet certain criteria, namely the patients get some health efforts, health facilities and health assistance which meet the standard of optimal health care services. Besides, every person has the individual rights such as the right of self determination. The right to health care is the basic social right which then leads to the right to medical care while the right to self-determination leads to the right to informed consent and the right to medical privacy.

According to Fred Ameln, the basic right to health is "the right to health care" which has a wider scope and this includes for example the health care with a smaller scope which is that related to sick people. The basic right

to health care can be seen in Article 25 United Declaration of Human Right (UDHR) which is indirectly related to health care. The elaboration of the study is as follows:

Every person has the right to the standard of living which fits the health and prosperity for themselves and their families including the food, clothes, housing, health care as well as other social services which are absolutely needed. These rights cover the rights to allowances in case of unemployment, sickness, disability, loss of spouse because of death, old age or loss of jobs caused by some situation and condition beyond their will. Mothers and children have the right to special care and assistance. All children, legitimate or not, enjoy the same protection.

Based on this, the basic rights to health are arranged in Act No. 39, 1999 about human rights which generally state that a person's basic rights include the right to life, the right to a family and to continue the generation, the right to self development, the right to privacy, the right to secured feeling, the right to prosperity, the right to be involved in the government. In the following part of the article, the relation to the people's right in health is clearly mentioned such as Article 9 Section 1 "every person has the right to life to defend the life and to increase the standard of living". Furthermore in Section 2 "it is mentioned that every person has the right to live peacefully, safely, happily, prosperously, physically and spiritually. Through this section, it can be interpreted that every person has the right to be safe and prevented from diseases. In addition in" Section 3 "it is said that every person has the right to the good and healthy environment" while in Article 11 it is mentioned that "every person has the right to the fulfillment of the basic rights to grow and develop properly". This can be interpreted that basically the government must fulfill the rights to have a healthy life physically and spiritually.

In health care service a hospital is a health facility which functions to give the health care services in order to fulfill the patient's rights. The basic right to get the best health care services originates from human rights which is the same both for poor patients and any other patients in general.

In Act No. 29, 2004 about Medical Practice in Article 1 Point 10, the definition of a patient is that "A patient is every person who consults their health problem to get health care needed both directly and indirectly to a doctor or dentist". In Act number 44, 2009 about hospital, Article 1 Point 4, it is mentioned that "A patient is every person who consults their health problem to get health

care needed both directly and indirectly in a hospital". Moreover, according to government regulations number 101, 2012 about Beneficiaries of health insurance contributions, the criteria of poor patients and people who are not financially competent determined by the minister of social affairs after coordinating with the Minister and/or heads of related institutions, basically a poor patient is determined after some verification done by the Central Bureau of Statistics which will then be listed by the minister of health as beneficiaries of health insurance contributions.

In principle, if connected with health insurance service, a poor patient entitled to health care services in a hospital is that having the health insurance as a beneficiary of health insurance contributions.

Dilemma in implementing the social function of hospitals in fulfilling poor patient's right: The government has the obligation to give health care services to fulfill the right to health for all people including poor people one of the ways is done by a hospital. Nevertheless, the government is also aware that the task of giving health care services in a hospital cannot be done on its own. Therefore, the government gives an opportunity for people to participate in organizing a hospital and thus, there are private hospitals. In order that the organization of a hospital is in accordance with the Constitution mandate, the government arranges the social function of a hospital.

The hospital's social function can be seen in Act No. 36, 2009 about health which obliges the health service facility to prioritize the patient's rescue. In Article 32 Section 1 of this act, it is mentioned that in emergency cases a health service facility, both the governmental and private ones, must give health care services to first rescue the patient's life and to prevent them from disability. Even in Section 2, it is confirmed that in emergency cases, a health service facility, both the governmental and private ones, must not refuse any patients and/or ask for a down payment. Act No. 44, 2009 about hospital specifically arranges the social function in Article 29 Section 1 letter f. Hospital Act strictly states that a hospital must exercise the social function by for instance giving the patient's health service facility to poor people, emergency care service without any down payment, free ambulance, services to victims of natural disaster and extraordinary events or social services for humanitarian mission. Nevertheless in practice there are still some violations. There are still some cases of poor patients being rejected in a hospital in several areas in

Indonesia. Because of the rejection by the hospital, the patients die because the medical assistance is late. Another fact, in the period of National Health Insurance (NHI) all people tried to get the the health care services through NHI facility whether they were rich or poor. Consequently, not few poor people who did not get any health care services despite the fact that they were the ones who should have got it. This is due, to the limited number of health resources the hospital had which included the hospital wards, medical personnel as well as the availability of other supporting resources such as medicine supplies and health equipment.

However, the social function must still be done by a hospital in accordance with the mandate contained in the law, especially to serve poor patients from the low class society and the good quality of the service will also have to be maintained. On top of that when talking about the quality of health care service, the standard must always be upgraded in relation to the social, economic, political, cultural and technological development as well as the requirement to increase the quality of the medical personnel, all of which must be supported by a high cost.

This causes a hospital practice to face a function shift. The function of a hospital now a days shifts from social activities to business activities. As a health facility that has solid capital, labor intensive and solid technology, currently a hospital faces some demands of the availability of sufficient resources and capital. Without them it is impossible for a hospital to do its function, let alone its social function.

This is the dilemma faced by a hospital in doing its social function to give health care services to poor patients. As the implementation of the obligation as stated in the law a hospital must serve poor patients which means that the quantity of the service is emphasized. Besides, a hospital must still fulfill its social function by maintaining the quality of the service which is also the patient's right. The obligation and fulfillment of the patient's right finally will lead to sufficient financing. If there is no fund availability and support, this will give a bad impact to the operational sustainability of the hospital itself and it will even influence the social function of the hospital.

So, far this dilemmatic problem elaborated above is still hard to solve. On the one hand a hospital must guarantee the quality and therefore the cost is bigger and the fund needed is bigger too. On the other hand, poor patients need to get the guarantee that they will get their

right through the social function of a hospital with the lowest cost or even without having to pay for the qualified service.

Hence, there must be a supervision of the social function of a hospital. So, far the supervision has been done in various periodical reports or other ways such as determining the standard, accreditation, tariff pattern and other functional supervision.

CONCLUSION

Hospital is a health facility whose main duty is to give health care services in the forms of complete health care efforts to fulfill the right to health care, namely the right to get the health care with the highest level.

As a health facility, a hospital has the obligation as in the mandate of the act to exercise its social function. The scope of the social function of a hospital is already bigger because it is not only to provide rooms for poor people but also to give emergency care without any down payment, free ambulance, services to victims of natural disasters and extraordinary events or social services for humanitarian missions.

In general dilemmatic problems faced by hospitas in Indonesia are between the fulfillment of the hospital's obligations to exercise the social function which has a bigger scope now and the fulfillment of the poor patient's rights to get the most qualified services. The limited resources and capital often become the hindrance in exercise the social function. Hospitals are often faced with a difficult choice, between giving health care services which are qualified but expensive and giving the health care services to poor people but without good quality.

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