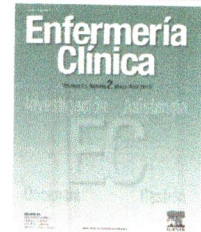




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The legal responsibility of the hospital on the use of fake vaccines


 Indar^{a,*}, Alwy Arifin^a, Nurhayani^a, Suryaningrat^b, Slamet Sampurno^c, Nur Azisa^c
^a Department of Health Policy and Administration, Faculty of Public Health, Hasanuddin University, Indonesia

^b Division of Health Law, Faculty of Law, Hasanuddin University, Indonesia

^c Division of Criminal Law, Faculty of Law, Hasanuddin University, Indonesia

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Abstract

Objective: The study aims to investigate legal responsibility and the supervisory functions of the Hospital of the use of fake vaccines.

Method: The research used the normative legal research, namely research methods using materials sourced from regulations.

Results: The study indicates that the Hospital of Harapan Bunda had broken the Law No. 44 of 2009 about Hospital and Health Minister's Regulation No. 72 Year 2016 of Pharmaceutical Service Standard in Hospital. The Hospital concerned has been subjected to administrative action and has been prosecuted by the victims' parents. The case is in the East Jakarta District Court. Hospital as a Corporation may be held criminally liable in accordance with Regulation of the Supreme Court of the Republic of Indonesia No. 13 of 2016 on Procedures for Handling Corporate Crime.

Conclusion: Hospital is considered negligent in supervising the use of fake vaccines at the Hospital. Hospitals procure any vaccine, it has to meet the Law No. 44 of 2009 about Hospital and Health Minister Regulation No. 72 of 2016 of Pharmaceutical Service Standard in Hospital.

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Introduction

A hospital is a legal person (rechtspersoon), namely a legal entity and legal personality. Initially, criminal law makers viewed human as being subject to criminal acts, however, hospital is essentially complex organizations, the development of technology increasingly complex and increasingly becoming more complex. Capital, labor and technology

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* Corresponding author.

E-mail address: indar.sh@gmail.com (Indar).

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intensive and problematic in various fields in law, economics, ethics and human rights, technology.¹

Based on Law No. 44 of 2009 concerning Hospital Article 1 states “Hospital is a health service institution that organizes health services individual plenary which provides inpatient, outpatient, and emergency care services emergency”. Hospitals as legal subjects have the duty to provide medical services and medical support not only to curative and rehabilitative aspects, but also preventive and promotive aspects.²

The legal responsibility of the Hospital has regulated in Article 46 of the Law No. 44 of 2009 concerning Hospitals: “The hospital is legally responsible for all losses incurred negligence committed by health workers at the Hospital”.

Responsibility is a consequence of freedom action related to ethics or morals in carrying out an act. Criminal liability is an obligation to pay retribution that will be accepted by the perpetrator of someone who has been harmed.³

The Netherlands determines the corporation as a criminal offender based on Arrest “Kleuter school Babel”, that the actions of individuals can be charged to legal entities, if the action is reflected in social traffic as an act of a legal entity.⁴

The fake vaccine circulation syndicate which was revealed by the Indonesian Police Headquarters Criminal Investigation Agency in June 2016, there were fourteen hospitals that participated in using the fake vaccine.

Circulation of fake vaccines occurs because of the scarcity of certain vaccines in the community where the preferred vaccines and not compulsory vaccines as government programs. Vaccines for immunization are grouped into mandatory immunizations and selected immunizations. Immunization vaccines must be provided free by the government, as a government program consist of BCG, Polio, DPT, Measles, Hepatitis B, and Hib is produced and distributed by PT. Biofarma.

The implementation of immunization is mandatory in Puskesmas, Posyandu, government hospitals and also carried out in private health hospitals. In this fake vaccine case was found that several private health facilities were buying from unofficial sources. In addition, after being thoroughly scrutinized by the Task Force. Fake vaccines were not found in government health facilities, the vaccines provided from the government. The results of laboratory tests of the Food and Drug Supervisory Agency, the contents of the fake vaccine were only in the form of NaCl which was put into bottles of the original Pediacel brand vaccine produced by PT. Sanofi-Aventis Indonesia. In that case the owner of the CV. Azka.

Design of research

The research used the normative legal research, namely research methods using materials sourced from regulations. It begins with an inventory of legal regulations concerning Health, Immunization, Hospitals and supervision of drug and food circulation.

Research sites

Based on the problems that mentioned above, research conducted at Harapan Bunda Hospital, East Jakarta, which is one of the fake vaccine users.

Data collection

To collect the data in this study, used by collecting, reading, and tracing a number of books, documents, legislation, scientific works, internet literature, which are related and support this writing, and by interview which is intended to conduct question and answer directly by researchers and respondents to obtain information.

Data analysis

Data collected both primary and secondary data, then analyzed descriptively qualitatively.

Results

Data showed the Director of Harapan Bunda Hospital admitted fake vaccines circulating in her hospital. The Director said she did not know about the circulation of fake vaccines in patients, she gave the police to investigate and prosecute the perpetrators. “This was done by someone unknown to Harapan Bunda Hospital and it was being done Bareskrim was arrested”.

Director of Hospital states that fake vaccines were circulating in the hospital is a Pediacel vaccine in March–June 2016. The vaccine comes to a vaccine shortage at the Hospital. Management of Hospital admitted that they were cheated on the circulation of fake vaccines and of be victims of the crime. The hospital said that a doctor in the first category and a nurse with the initials I was the culprit of the entry of a fake vaccine to the hospital.

Hospital Law No. 44 of 2009 Article 15 states pharmaceutical supply services at hospitals must follow pharmaceutical standards. The management of medical devices, pharmaceutical preparations, and consumables in hospitals must be carried out by a one-door pharmaceutical system installation.

Regulation of the Minister of Health No. 72 of 2016 concerning Pharmaceutical Service Standards at the Hospital regulates the one-stop pharmacy service system. The implementation of Pharmaceutical Services at Hospitals must ensure the availability of Pharmaceutical Preparations, Medical Devices and Medical Materials, are safe quality, useful, and affordable.⁵

For the civil liability of Harapan Bunda Hospital was sued for compensation worth 600 million rupiah by the Counterfeit Vaccine Victims Alliance, is currently being handled in the East Jakarta District Court. Harapan Bunda Hospital as a corporation has not been asked for criminal responsibility by the parents of victims even though the Corporation as a criminal offender can be accounted for under criminal law.

Discussion

This research shows that the Hospital as a corporation has committed administrative violations related to the use of fake vaccine which its procurement is not in accordance with the Hospital Law No. 44 of 2009 and Regulation of the Minister of Health No. 72 of 2016 concerning the Standard of

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