



## CONSTIPATION OF JUSTICE IN HOSPITALS LIABILITY RELATED TO DAMAGES SUFFERED BY PATIENTS DUE TO NEGLIGENCE OF MEDICAL PERSONNEL IN *INFORMED CONSENT* PROBLEMS

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**Abstract:** *Research law this aim for knowing how not quite enough answer House sick to action power medical causes \_ loss to patient in agreement therapeutic. Study this is study law normative \_ \_ prescriptive. Approach used \_ in study this that is approach law (statute approach). Type ingredient the law used that is ingredient primary and secondary law. Collection technique ingredient the law used in study this through studies bibliography and more analyzed with technique deduction, analysis for interesting conclusion from things that are general Becomes things that are special. connection law Among power medical and home sick according to a number of regulation related legislation, namely : Constitution Number 29 of 2004 concerning Practice Medicine , Law Number 44 of 2009 concerning House Sick , Act Number 36 of 2014 concerning Health Workers, Law Number 13 of 2003 concerning Employment , and Code of Ethics House Sick could concluded that connection Among House pain and energy medical based on existence connection work . Connection work Among power medical and home sick determine House sick could responsible. House sick responsible on action negligence power medical causes \_ loss to patient could determined based on Article 1367 of the Civil Code, and Article 46 of the Law Number 44 of 2009 concerning House Pain, which states that House sick responsible on action negligence committed by medical.*

**Key Words:** *Home Responsibilities, Illness, Negligence , Medical Personnel.*

### 1. BACKGROUND REAR:

position power medical in field health no only for cure the patient but also as officer or employee at home sick. Medical personnel when do action medical to patient required *informed consent*, if from party patient agree to *informed consent* the so Among power medical and patient do agreement therapeutic . Giving service medical to patient, between power medical with patient arise something connection law resulting from binding \_ self second party in something the so - called agreement with agreement therapeutic . Agreement therapeutic is agreement Among power medical with patient, in the form of connection the law that gave birth rights and obligations for second split party . Object from agreement this different with object agreement generally. In agreement therapeutic , which becomes object agreement is effort / therapy for cure patient . So that agreement therapeutic is agreement for determine or effort for look for the most appropriate therapy for patients treated by doctors. \_

Arrangement about power medical set in Article 8 of the Law Number 36 of 2014 concerning Health Workers ( hereinafter called Health Manpower Act ) states that energy in the field health consist on power health and assistant power health medical personnel including into the power health in accordance in Article 11 paragraph (1) letter a Law on Health Workers. Article 11 paragraph (2) of the Health Personnel Law states that. “ Types of Health Workers included in group power medical as referred to in paragraph (1) letter a consists of on doctor , doctor specialists and doctors tooth specialist . Medical personnel sometimes do error in give service health to the patient. Error power medical this could occur consequence lack of knowledge, lack experience and understanding as well as ignore something proper deed \_ no done . If error the conducted with on purpose nor because negligence doctor, then patient and staff medical could ask accountability (*responsibility*) from power the medical concerned. Accountability power medical could in the form of liability, criminal , and administrative negligence committed by \_ \_ medical in use skills



and knowledge his knowledge for treat the patient called as action malpractice . The omission in question is attitude not enough careful where the action taken by the power medical is at under standard service medical.

House sick as organization of business entities in the field of health have role urgent in realize degrees health public optimally, because of that House sick required to be able manage activities , with prioritize responsibility \_ answer professionals in the field health , especially power medical and energy nursing in operate Duty their duties and powers . Not forever service medical staff provided \_ \_ health at home sick could give results as expected by all \_ party . There are times service the occur negligence power health that causes catastrophe, like disabled , paralyzed , or even died . Provision about House sick responsible on loss patient consequence negligence power health this, can cause implication more carry on for party House sick , energy health nor for patient . House sick need knowing form negligence power health that becomes not quite enough answer House pain and shape negligence power poor health \_ including in not quite enough answer House sick.

In responsibility, Home Sick responsible answer full on all activities carried out good by power medical or paramedic . Liability burden given to head House Sick or director House the pain that has accept delegation authority from owner House Sick for doing all related activities \_ with service health. Accountability accepted \_ House Pain can also originated because existence negligence from power medical. form accountability House sick by civil is in the form of replacement loss as intended \_ in Article 1243 of the Civil Code. Whereas accountability by administration charge \_ to House Sick could in the form of letter warning and revocation permission establishment House sick.

## 2. DISCUSSION :

By line big, relationship law Among power medical and home sick, according law there is two type relationships, including :

- Connection employment Connection employment put doctor as employee House sick, deep meaning there is connection Among giver work and recipient work. Relationship pattern law like this called as a “doctor in” from House sick. Doctor as employee House sick must bow down to whole Settings about to whole regulation about employment. Mutual rights and obligations \_ come back Among giver work and recipient work, other than set in Constitution Employment, also regulated in Civil Code.
- Connection based on agreement Connection this put that position doctor no employee House sick, between doctor and home sick there is the bond that was born from agreement. The essence of agreement the doctor could use facility House sick at the moment doctor and patient there is connection law service health. Relationship pattern law this formed connection law Among doctor and home sick based on agreement, all set in existing regulations \_ in Civil Code. In connection law here, doctor only use facilities at home sick, for example facility take care road and/ or facility take care stay owned by the house sick. A number of type evolving pattern \_ in relation with connection work Among doctor and home illness, including :
  - a. Doctor as employee (employee) Doctor employee House sick come during working hours and do \_ service medical during office hours for and above name House sick and bound by the rules contained in the house sick. Doctor who practices at home sick considered as "the one under " supervision management and owner House sick ". Actually assumption this true to the doctor who works as employee House sick, though doctor no employee normal, because doctor have autonomy profession that is outside \_ control House sick .
  - b. Doctor as partner (attending physician) Relationship patient-doctor where doctor work as attending physician, This pattern occur if patient already in state competent and cared for at home sick that the doctors work no as an employee, but as partner (attending physician). Pattern like this put doctor and home sick in same position \_ degrees. Here position doctor is as obligatory party \_ give achievement, while function House sick just as a place that provides facilities ( lodging, eating and drinking , nurses / midwives as well as means medical and non -medical ).
  - c. Doctor as guest (independent contractor) Doctor visitor or independent contractor is working doctor \_ by independent, isn't it ? for and above name House sick , and deep do her job no bound by regulations and office hours House sick , he Act by free and not under \_ \_ supervision party House sick . With term else, doctor come to House sick the if there is patient the person being treated, and the patient the come to House sick on suggestion from the doctor concerned. Doctor partner work this by law domiciled parallel with House sick, responsible by independent, responsible by proportional in accordance with provisions at home sick, as well bound with something agreement work with House sick that .Each from pattern connection work the will very determine is House sick must responsible answer or no to loss caused by error \_ doctor as well as how far \_ answer must \_ carried.



- Legal Relationship between Medical Personnel and Home Sick in Constitution Number 29 of 2004 concerning Practice Medical

Connection law Among power medical and home sick in Constitution this of course no set by clear, will but from Article 41 and Article 42 of Law no. 29 of 2004, relationship visible law \_ is that House sick as means service health is the place maintenance effort service health used by doctors \_ for practice medicine . Connection power medical and home sick is pattern connection work where doctor have position as power health at home sick for doing practice maintenance effort health. Relationship pattern work the formed when existence pattern connection therapeutic Among doctor and patient at home sick. Could said that connection Among power medical and home pain that is each other equip, home sick need power medical in order to operate function as means service health, as well as power medical in need power medical as the place for organize practice health

- According to Constitution Number 44 of 2009 concerning House Sick

Connection law power medical and home sick based on Constitution Number 44 of 2009 explained by implicit in Article 7 paragraph (1) and Article 12 paragraph (1), (2), and (3). A number of chapter on explain that House Sick need source power human, where House sick need power health for operate service health which consists of from power medical, energy support medical, energy nursing, energy pharmacy . Besides that, Home Pain also needs non -health workers, such as power management House Sick for operate service health. With so, according to a number of chapter above, relationship law Among power medical and home Sick where power medical do practice or profession in maintenance House Sick with obligation have letter permission practice in accordance with provision regulation legislation. This thing there is in Article 13 paragraph (1) which states that, "Medical personnel who perform practice medicine at home Sick must have a license Practice in accordance with regulation legislation. " Whereas House Sick give means infrastructure as well as facility for implementation facility health.

- Constitution Number 36 of 2014 concerning Health Workers

Health Act no arrange by explicit about definition House sick, will but in a number of chapter in The Health Manpower Act is mentioned by implicit how connection Among power medical and home sick. Like in Article 26 of the Health Personnel Law which states : that : Article 26 (1) Health workers who have placed in Facilities Mandatory Health Services doing Duty in accordance with competence and authority (2) Leader Facility Health Services as referred to in paragraph (1) and/ or head the area in charge of Facility Health services must consider fulfillment need clothing , food , shelter , and location as well as security and safety appropriate health workforce with provision Regulation legislation .

Basically \_ agreement Among doctor with patient included in the agreement in spanningsverbitenis or engagement effort , because in draft this a doctor only obliged for do service health with full earnestness , with deploy whole ability and attention in accordance with standard his profession . Deviations committed by a \_ doctor from procedure medical, meaning do action deny promise or injury promise as arranged \_ in Articles 1236 and 1239 of the Civil Code . If a patient or his family consider that doctor no do obligations contractual, patient the could sue with reason default and demand that they fulfil terms that . Following will discussed more carry on related problem implementation not quite enough answer House sick in Thing change loss on losses suffered \_ patient as consequence existence negligence power medical related *Informed Consent*.

- a. Errors and Omissions Medical in *Informed Consent* Hal

Definition error interpreted by general, i.e actions which \_ objective no deserve done. according to Hoekema in book Bahder Johan Nasution, error in service health interpreted as . "...acted below the standard of what be expected on an average in reasonbleness of a follow professional in similiar circumstances and places." Whereas definition negligence according to Bost vs Rilley dispute at Hammon and Caltamba Memorial Hospital is "Negligence is the lack of ordinary care. It is the failure to do what a reasonable careful and prudent person would have done or the doing of something which a reasonably person would not have done the occasion in question." From definition the could concluded that negligence covers two thing, that is because do something that should be no conducted or because no do something that should be did.

- b. Home Responsibilities \_ It hurts on Medical Force Action

Parameters for determine how far is the house sick responsible answer to action negligence power medical at home sick, by theoretical could seen from various aspects, such as :



- 1) Relationship pattern therapeutic relationship pattern therapeutic Among patient and home sick , position House sick as the party who gave achievement , meanwhile doctor only working as *employee* ( *sub-ordinate* from House sick ) on duty doing obligation House sick . In term other , position House sick is as principal, and doctor as agents. Whereas patient domiciled as obligatory party \_ give counter achievement . Connection like this usually apply for House sick owned by government whose doctors paid by fixed and full , no based on total patients who have handled or quality as well as quantity action medical treatment \_ doctor . With existence pattern connection therapeutic this ( relationship home patient sick ), then if there is loss suffered by the patient because negligence doctor ( *force* ) medical , then in Thing this House responsible sick \_ answer .
- 2) Relationship pattern work power medical at home sick ; There is a number of type evolving pattern \_ performance relation with connection work Among power medical ( doctor ) and home sick including : doctor as power work ( *employee* ); doctor as partner ( *attending physician* ); doctor as independent creators. Each from pattern connection the will very determine is House sick must responsible answer or no to loss caused by negligence \_ doctor as well as how far \_ answer / sue that must be carried. As has been explained above, that if connection work doctor as an employee, then if occur harm to the patient because action doctor that , home responsible sick \_ answer . Whereas if pattern connection work doctor as attending physician, if there is negligence doctor ( *force* ) medical ) which causes harm to the patient , then doctor ( *force* ) medical ) in charge answer , no not quite enough answer House sick .
- 3) House sick as corporation. House sick as a legal entity ( corporation ) can prosecuted and accountable on actions malpractice power medical at home sick , based on teachings or doctrine justification corporation burdened accountability in accordance with the doctrine of vicarious liability, where teachings this also known as teachings accountability substitute . A employer responsible on the mistakes that have been done by his subordinates along Thing that occur in skeleton her job. This thing give possibility to aggrieved party \_ because deeds oppose law from they that sue employer to pay change loss. With teachings this , then corporation possible responsible on acts committed by employees , their proxies , or mandate , or who is responsible answer to corporation that .

### 3. CONCLUSION :

Relationship law Among power medical and home sick could seen from pattern connection work going on Among House pain and energy medical. Relationship pattern work the including : doctor as employee ( *employee* ), doctor as partner ( *attending physician* ), and doctor guest ( *independent contractor* ). Each from pattern connection work the will very determine is House sick must responsible answer or no to loss caused by negligence \_ doctor as well as how far \_ answer must \_ carried. House sick as corporation, apply principle *vicarious liability*, principle this contain mean that not quite enough answer arise consequence omissions made by his *subordinates* . \_ \_ In relation with service medical so House sick ( as *employer* ) can responsible answer on negligence made by power \_ working health \_ in position as a subordinate ( *employee* ) . So that House sick could responsible sue on negligence made by power \_ working health \_ in position as *employees*.

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