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LEGAL RESPONSIBILITY OF HOSPITALS IN MAINTAINING THE SECURITY AND CONFIDENTIALITY OF PATIENTS' ELECTRONIC MEDICAL RECORD DATA

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Abstract

The very rapid development in health services today requires that every health service provider organize medical records electronically with the principles of security and confidentiality of data and information. However, in practice, Elecronic Medical Records is still experiencing many legal issues that are detrimental to both the Hospital and especially the patients themselves. Therefore this study aims to analyze the legal basis of hospital obligations for the security and confidentiality of electronic medical record patient data and analyze the responsibility of hospitals for the security and confidentiality of patient's EMR data. The type of research used in this thesis is normative juridical research with statutory approach and conceptual approach. The results still found some legal wins, ambiguities and some shortcomings in implementing this EMR in full

Keywords: Elecronic Medical Record, Hospital, Security, Confidentiality

INTRODUCTION

The rapid development in health services today requires every health service provider to immediately be able to meet the wishes of its customers. In order to support these health services, health data must be stored neatly in an archive called Medical Records (hereinafter referred to as RM). RM is one of the most important pillars in hospital administration. With the development of medical science, health law and technological developments coupled with patients or society who are increasingly smart and critical about their rights, therefore the implementation of medical records should be developed even better (Hapsari, 2014)

The creation of medical records or RM in hospitals or by doctors on patient cards at the place of practice has been carried out for a long time, but it has not become an obligation, so the implementation is not considered so serious. Along with the development of a very dynamic society, RM becomes important. . This is also stated in Law number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK). Consumer Protection is any effort that ensures legal certainty to provide protection to consumers. In Article 4 number 1 of the UUPK which states that consumer rights are the right to comfort, security, and safety in consuming goods and/or services. So that consumers, in this case patients in the hospital,

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have the right to comfort, security and safety in receiving the services provided by the hospital.

Therefore, in its initial history, the Indonesian government through the Ministry of Health has issued Regulation of the Minister of Health Number 749a/MENKES/Per/XII/1989 concerning RM/ *Medical Records*. With the issuance of this PERMENKES, the procurement of RM has become a must or has become a law that must be obeyed for every health service facility, but the regulation still revolves around paper-based (conventional) RM. Furthermore, PERMENKES No. 24 of 2022 concerning RM was issued, which specifically explains RME that "Every Health Service Facility is obliged to carry out Electronic Medical Records" (Hapsari, 2014)

However, in practice, RME still experiences many legal issues that are detrimental to both the hospital and especially the patients themselves. One of the legal issues in January reported on the tekno.kompas.com news page, it was reported that there had been a data leak of 6 million patient RME data from various major hospitals in Indonesia. The data is known to be used to trade unilaterally for payments in the form of cryptocurrency. This can certainly be abused and result in great losses for the owner. If a patient who experiences a data leak suffers from a certain disease or medical condition that is confidential, and if known by the public, it will result in him being shunned or even dismissed from his job. In addition, if a patient's medical photo that is inappropriate to see is then disseminated, it will have a severe psychological impact on the patient (Riyanto, 2022).

In principle, the contents of the Medical Record belong to the patient, while the Medical Record file (physically) belongs to the Hospital or health institution. This is in accordance with Article 26 paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia Number 24 of 2022 concerning Medical Records. Maintaining security, in storing data/information and ease of access is the obligation of the 3rd party to the authority. Meanwhile, those who need data/information must always respect the privacy of patients. Ensuring the quality of security, privacy, *confidentiality*, and safety of devices that fortify RM data/information has been regulated in Article 23 of the Regulation of the Minister of Health of the Republic of Indonesia Number 24 of 2022 concerning Medical Records. Therefore, all authorities who need more detailed data/information in accordance with their duties are obliged to maintain the four elements above (Gemala, 2008; Purba & Yulita, 2018).

To support the formulation of the above problem, the purpose of this study is to analyze the basis of the legality of the hospital's obligation to the security and confidentiality of patients' Electronic Medical Record data. To analyse the hospital's responsibility for the security and confidentiality of patients' RME data.

RESEARCH METHODS

The type of research used in examining this problem is normative juridical research, where the law is conceptualized as what is written in laws and regulations (law in books) or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate (Kelsen, 2019). The research methods used are a statute approach and a conceptual approach. The statute approach is a research that prioritizes legal materials in the

form of laws and regulations as a basic reference in conducting research. Meanwhile, the conceptual approach is a type of approach in legal research that provides an analytical perspective on problem solving in legal research seen from the aspects of the legal concepts behind it, or can even be seen from the values contained in the normation of a regulation in relation to the concepts used (Rifa'i, 2023). The activity that will be carried out in the Collection of Legal Materials in this study is a Literature Study by means of content identification. The collection tool by identifying the content is obtained by reading, studying, and studying literature materials in the form of laws and regulations, articles from the internet, national seminar papers, journals, documents, and other data that are related to the legal materials of this research.

The method of analysis of legal materials used in this study is a descriptive normative method because this study does not use concepts that are measured/expressed by numbers or statistical formulations, so the analysis of legal materials is carried out in a guided way or based on legal norms/rules (in a broad sense, namely those consisting of legal values, legal bases, legal rules in a narrow sense and authoritative texts or legal rules), Legal concepts or legal doctrines contained in the framework of thought or literature review are used to answer the problems in this research.

RESULT AND DISCUSSION

Hospital Legal Liability

The concept of responsibility was first proposed by the originator of pure legal theory, namely Hans Kelsen. According to Hans, responsibility is closely related to obligations, but they are not identical. This obligation arises because of the existence of legal rules that regulate and provide obligations to legal subjects. Legal subjects who are burdened with obligations must carry out these obligations as an order from the rule of law. As a result of non-implementation of obligations, sanctions will be imposed. This sanction is a forced action of the rule of law so that obligations can be carried out properly by legal subjects. According to Hans, the subject of the law who is subject to the sanction is said to be "responsible" or legally responsible for the violation (Kelsen, 2019).

Based on this concept, it can be said that responsibility arises from the existence of a legal rule that gives obligations to legal subjects with the threat of sanctions if these obligations are not implemented. Such responsibility can also be said to be a legal responsibility, because it arises from the order of the rule of law/law and the sanctions given are also sanctions stipulated by law, therefore the liability carried out by the subject of law is a legal responsibility.

Hospitals are public service delivery organizations that have responsibility for every health public service service they provide. This responsibility is to provide affordable quality health services based on the principles of safety, comprehensiveness, non-discrimination, participation and provide protection for the community as health service users (*health* receivers), as well as for health service providers in order to realize the highest degree of health (Prasada & Mudana, 2014).

In principle, the contents of the Medical Record belong to the patient, while the Medical Record file (physically) belongs to the Hospital or health institution. This is in accordance with Article 26 paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia Number 24 of 2022 concerning Medical Records. Maintaining security, in storing data/information and ease of access are the demands of the 3rd party authorities. Meanwhile, those who need data/information must always respect the privacy of patients. Security, privacy, *confidentiality*, and safety of devices that fortify data/information in health records. That way, various authorities who need more detailed data/information in accordance with their duties must always maintain the four elements above.

A hospital is a public service organization that has responsibility for every health public service it provides, including the maintenance of medical records, especially electronic. This responsibility is to provide affordable quality health services based on the principles of safety, comprehensiveness, non-discrimination, participatory and provide protection for the community as health service users (*health* receivers), as well as for health service providers in order to realize the highest degree of health.

As a center for the implementation of public services, hospitals as an organization are required to provide quality medical services for the community. According to the Decree of the Minister of Health of the Republic of Indonesia Number 722 / Menkes / SK / XII / 2002 concerning Guidelines for Internal Regulations of Hospitals (*Hospital By Laws*), that a hospital is basically something that can be grouped into medical services in a broad sense that concerns promotive, preventive, curative and rehabilitative activities of education and training of medical personnel research and development of medical science. Based on these provisions, there are basically four parts related to the responsibility of hospitals as medical services, namely :

1. Responsibility for personnel;
2. Professional responsibility for quality;
3. Responsibility for facilities/equipment; and
4. Responsibility for building safety and maintenance.

According to Law Number 44 of 2009 concerning Hospitals Article 46, hospitals are legally responsible for all losses caused by negligence committed by health workers in hospitals. The legal responsibility of hospitals in the implementation of health services to patients can be seen from the aspects of professional ethics, administrative law, civil law and criminal law.

Administrative Legal Responsibility

Medical records have an administrative meaning because their content concerns actions based on authority and responsibility for health workers. The legal aspects of administration to health services, especially the implementation of medical records, are contained in several laws that are sectoral. In article 29 paragraph (1) letter h of Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals, it is stated that in providing health services, hospitals are obliged to organize Medical Records. Then in article 3 paragraph (2) letter d of the Minister of Health Regulation Number 24 of 2022 concerning Medical Records states that

Health Service Facilities as referred to in paragraph (1) also list Hospitals as one of the health facilities that are required to hold Medical Records, even stated in article 45 that All Health Service Facilities must organize Electronic Medical Records in accordance with the provisions in this Ministerial Regulation at the latest on December 31, 2023.

Administrative sanctions can be imposed on health workers and health service facilities that are suspected of violating the provisions of Law No. 36 of 2009 concerning Health, especially in article 57 paragraph (1) where everyone has the right to the confidentiality of their personal health conditions that have been submitted to health service providers, but this does not apply in article 57 paragraph (2) where the provisions regarding the right to confidentiality of personal health conditions as referred to in paragraph (1) does not apply in the event of: a legal order; court order; the permit concerned; community interests; or the interests of the person.

The above administrative sanctions are written in the same Law in article 188 paragraph (3) in the form of a written warning, revocation of temporary permits and/or permanent permits. For corporations, in addition to the revocation of business licenses, they will be subject to the revocation of legal entity status in accordance with article 201 paragraph (2).

The legal aspects of administration in medical practice are listed in article 36 of Law No. 29 of 2004 concerning Medical Practice. The article states that every doctor and dentist who practices medicine in Indonesia is required to have a practice license. A practice license is written evidence given by the government to doctors and dentists who will practice medicine after meeting the requirements.

In addition to medical practice, nursing practice also has an administrative legal aspect. Article 19 of Law No. 38 of 2014 concerning Nursing states that nurses who practice nursing are required to have a permit. This permit is given in the form of SIPP or called the nurse practice license. The administrative sanctions are the same, listed in article 58 of Law no.38 of 2014 concerning nursing in the form of verbal reprimands, written warnings, administrative fines and/or revocation of permits.

The legal aspects of administration to health services carried out by hospitals are recorded in article 13 paragraph (1) of Law No. 44 of 2009 concerning Hospitals. The article states that medical personnel who practice medicine in hospitals are required to have a Practice License. Then for the hospital permit itself, it is stated in article 25 of Law No.44 of 2009 concerning hospitals which states that every hospital operator is required to have a permit consisting of an establishment permit and an operational permit.

Sanctions against doctors and dentists are assigned to the Honorary Council of Indonesian Medical Discipline in Articles 67-69 of Law Number 29 of 2004 concerning Medical Practice to examine and complain about cases, where in article 67 it is written that the Honorary Council of Indonesian Medical Disciplines has the right to examine and give decisions on complaints related to the discipline of doctors and dentists, followed by article 68; If a disciplinary violation is found in the examination, the Indonesian Medical Discipline Honorary Council forwards the complaint to a professional organization, where in article 69 it is explained that the sanctions given can be in the form of:

1. Giving written warnings;

2. Recommendation for revocation of registration certificate or practice license and/or;
3. Obligation to attend education or training at a medical or dental education institution.

In this case, the hospital's administrative sanctions will be imposed if the party is proven to meet points b and c above, where point b if it is proven that it does not meet the standard requirements in the qualification of health workers' ability to organize medical records, especially electronic and point c if it is proven that there is an act of misuse of electronic medical record data. In Article 57 of Law Number 27 of 2022 concerning Personal Data Protection, administrative sanctions are explained in the second to fifth paragraphs in the form of;

a. Paragraph (2): Administrative sanctions as intended in paragraph (l) in the form of:
   1) Written warning;
   2) Temporary suspension of Personal Data processing activities;
   3) Deletion or destruction of Personal Data; and/or
   4) Administrative denda.
b. Paragraph (3): Administrative sanctions in the form of administrative fines as referred to in paragraph (2) d up to 2 (two) percent of the annual income or annual receipts for the violation variables.
c. Paragraph (3): Administrative sanctions in the form of administrative fines as referred to in paragraph (2) d up to 2 (two) percent of the annual income or annual receipts for the violation variables.
d. Paragraph (5): Further provisions regarding the procedures for the imposition of administrative sanctions as referred to in paragraph (3) are regulated in the Government Regulation.

Civil Law Liability

The hospital is a place where professionals work who carry out their activities based on the pronunciation of the oath and code of ethics of their profession. Therefore, the Hospital is required to be able to manage its activities, by prioritizing the responsibility of professionals in the health sector, especially medical personnel and nursing personnel in carrying out their duties and authorities (Wahyudi, 2011). However, medical services provided by health workers at hospitals are not always able to provide results as expected by all parties. There are times when there is negligence of health workers in these services that causes losses; As in this context, it is a leak of medical record data, especially electronically, whether intentionally or not.

Law Number 36 of 2009 concerning Health Article 58 paragraph (1) states that, "everyone has the right to claim compensation against a person, health worker, and/or health provider who causes losses due to errors or negligence in the health services he receives". Based on these provisions, it can be seen that the prosecution of this compensation is either due to mistake (intentional) or due to negligence in health services, and the prosecution is directed at a person, health workers or the organizer (Hospital). Meanwhile, based on Law No. 44 of 2009, the prosecution of losses is only aimed at the hospital, which is caused specifically by the negligence of health workers in the hospital. Article 46 of Law Number 44

of 2009 concerning Hospitals states that, "The Hospital is legally responsible for all losses incurred due to negligence committed by health workers in the Hospital".

Civil Liability of Hospitals for Negligence in the Implementation of Electronic Medical Records

Article 46 of the Hospital Law has guaranteed for patients that patients can hold the hospital accountable if they suffer losses due to negligence committed by health workers in providing health services. This is in accordance with the provisions contained in Law Number 36 of 2009 concerning Health Article 58 which clearly states that patients can sue or demand liability to health workers or to health service agencies if they suffer losses due to intentional or negligent health services.

However, the provisions of Article 46 of the Hospital Law also clearly limit that the Hospital will only be responsible for losses experienced by patients due to negligence committed by health workers in providing health services and in accordance with the scope of their responsibilities at the Hospital. Based on the provisions of the above article, losses caused by intentionality or medical risks carried out by health workers personally in health services at the Hospital are not the responsibility of the Hospital and are the responsibility of the health workers concerned. So that patients cannot sue the Hospital to take responsibility due to intentionality or medical risks in health services carried out by health workers even though it occurs in the Hospital itself.

The employer's liability in Article 1367 paragraph (3) of the Civil Code is not only about responsibility in the work bond, including to a person who is outside the work bond has been ordered by another person to do a certain job, as long as the person who is ordered to do the work does his work independently either on his own leader or has done the work on his instructions. As referred to in Article 1601 letter a of the Civil Code, the employer's liability for unlawful acts of its employees is: "Labor agreement is an agreement with which one party, the worker, binds himself to under the orders of the other party, the employer, for a certain time to perform work by receiving wages".

Comparing the sound of Article 46 of Law Number 44 of 2009 concerning Hospitals with Article 1367 of the Civil Code paragraph (3) above, it can be concluded that Article 46 of Law Number 44 of 2009 concerning Hospitals is *a derivative* or derivative of Article 1367 of the Civil Code paragraph (3) which applies specifically to hospitals, or Article 46 of Law Number 44 of 2009 is *lex specialist*.

The provisions of the above Article are also in line with the provisions of the doctrine of *superior respondeat*. *The doctrine of superior respondeat* implies that an employer is a person who has the right to give instructions and control the actions of his subordinates, both on the results achieved and on the methods used. In addition, with the development of health laws and the sophistication of medical technology, hospitals cannot escape from the responsibility of the work done by their employees, including what is done by the medical staff (Nasution, 2005).

Hospital Civil Liability Compensation

The prosecution of compensation for losses experienced by patients in health services, both by the patient himself and his family, has been regulated in Law Number 36 of 2009 concerning Health which is formulated in Article 58 paragraph (1) which states, "Everyone has the right to claim compensation against a person, health worker, and/or health provider who causes losses due to errors or negligence in the health services he receives".

There are two forms of compensation due to unlawful acts that are commonly used in patient lawsuits against health workers and hospitals in some cases, namely material damages and immaterial damages:

a. Compensation material Ganti
b. Compensation imaterial

The provisions for compensation based on a default lawsuit based on Article 1246 of the Civil Code will provide losses in the form of costs, losses and interest. However, the liability provision based on the default lawsuit is the existence of a breach of promise or non-fulfillment of the content of the agreement, in this case it is a breach of promise or non-fulfillment of the therapeutic agreement.

The therapeutic agreement or agreement between doctors or health workers and patients is in terms of achievements that must be fulfilled by doctors or health workers in the form of seriousness, meticulousness, and prudence based on science and skills and experience as doctors and health workers in carrying out medical procedures, especially in the implementation of medical records (Dali, Kasim, & Ajunu, 2019). Where, doctors and health workers must meet professional standards, medical service standards and standard operating procedures, if these three things are met, doctors and other health workers can be free from lawsuits and lawsuits. Based on the description above, the lawsuit is based on default, the compensation obtained by the patient is compensation based on the content of the therapeutic agreement that has been previously approved by the patient in obtaining health services. In the form of compensation, compensation based on default in the form of material compensation, namely losses that are actually suffered by the victim and the amount can be measured mathematically. This material remedy is in accordance with the therapeutic agreement that the patient has previously agreed.

The Civil Code does not expressly or even does not regulate in detail about certain damages, or about any aspect of compensation, so the judge has the freedom to apply such compensation in accordance with the principle of propriety, as long as it is indeed requested by the plaintiff. The justification for the freedom of judges is that the interpretation of the words loss, cost and interest is very broad and can cover almost everything related to compensation.

The next guideline can be found in Article 1372 of the Civil Code which states: "... In assessing each other's matters, the Judge must pay attention to whether or not the insult is rude as well as the rank, position and ability of both parties and the situation". In article 1372 of the Civil Code, it is emphasized that in deciding the compensation received by the patient in his lawsuit both to the health worker and to the hospital, the Judge pays attention to the position, ability and circumstances of the defendant and the plaintiff while still considering the basis of justice for both.

Criminal Law Liability

1. Definition of Criminal Liability

In criminal law, a person cannot be held criminally accountable without first committing a criminal act, because it would be unfair if suddenly someone had to be responsible for an action, while he himself did not commit the act. In criminal law, the concept of criminal liability is a central concept known as the doctrine of error. In Latin, the teaching of error is known as *mens rea*. In English, the doctrine is formulated as *an act does not make a person guilty, unless the mind is legally blameworthy* . Based on this principle, there are two conditions that must be met to be able to be punished by a person, namely forbidden external acts/criminal acts (*actus reus*) and there is an evil inner attitude (*mens rea*) (Dan & Pemidanaan, 2005).

Criminal liability can be interpreted as the continuation of objective reproaches that exist in criminal acts and subjectively qualify to be punished for their actions. The basis for a criminal act is the principle of legality, while the basis for a person to be punished is the principle of guilt. The relationship between criminal liability and the offense is emphasized by Roeslan Saleh in his book entitled Criminal Acts and Criminal Liability: Two Basic Definitions in Criminal Law, which states that (Saleh, 2011):

"In fact, whether the perpetrator is convicted or not does not depend on whether there is a criminal act or not, but whether the defendant is reprehensible or not for committing the criminal act. Therefore, it is also said that the basis of the existence of a criminal act is the principle of prohibition and is threatened with punishment whoever commits it, while the basis of the punishment of the maker is the principle of "not being punished if there is no wrong".

Based on this explanation, it can be concluded that mistakes are a very important thing to punish someone. Without it, criminal liability would never exist. Therefore, in criminal law, the principle of "no crime without guilt" is known (*geen straf zonder schuld*).

2. Elements of Criminal Liability

Elements of criminal acts and mistakes (intentionality) are central elements in criminal law. The element of criminal act is located in the objective field followed by the element of unlawfulness, while the element of criminal liability is a subjective element consisting of the ability to be responsible and the existence of mistakes (intentionality and forgetfulness). Based on this, Moeljatno concluded that criminal liability or wrongdoing according to criminal law consists of three conditions as follows.

a. the ability to be responsible that for the ability to be responsible there must be (Prodjodikoro, 2015):
b. The ability to distinguish between good and bad deeds which is a factor of reason (2) the ability to determine one's will according to one's awareness of the good and bad of the deed which is a factor of feeling or will.
c. There is a mistake of the maker, (1) Intentionality (*Dolus*). There are two theories related to the meaning of "intentional", namely the theory of the will and the theory of knowledge or imagination. It is "intentional" when an effect caused by an action is

imagined as the intention of the action and therefore the action in question is carried out according to the shadow that was first made. What is meant by forgetfulness is that the defendant did not intend to violate the prohibition in the law, but he did not heed the prohibition. In forgetfulness, the defendant did not heed the prohibition so that he was not careful in doing an act that objectively causal gave rise to the prohibited situation. According to Moeljatno quoting Van Hamel's statement, forgetfulness contains two conditions, namely not holding a conjecture as required by law and not holding a prudence as required by law. Forgetfulness is viewed from the perspective of the creator's consciousness, so the forgetfulness can be distinguished into two, namely: Realized forgetfulness and unconscious forgetfulness. There are two reasons for the abolition of criminal penalties. (1) The reason for the inability to account for a person lies purely on that person; and (2) the reason for the inability to account for a person who is located purely outside the person.

In essence, criminal liability is the responsibility of a person for the criminal acts he commits. It can be said that it is impossible for a person to be held accountable and sentenced to a crime if he does not commit a criminal act. But even though he has committed a criminal act, he will not necessarily be sentenced. The perpetrator of a criminal act will only be punished if he has a mistake in committing the crime.

3. Criminal Liability of Hospitals as a Corporation

In his book entitled "Reviewing the Concept of Corporate Criminal Liability", Adriano explained that hospitals are legal entities that also have a position as legal subjects because they are both bearers of rights and obligations. As for the status as a legal subject, hospitals as corporations can be legally insured with the postulates "Every person who carries out and carries out legal rights and obligations, then he or she can be held accountable for the implementation and implementation of these legal rights and obligations" (Achmad, 2016). However, according to Adriano, RS as a corporation which is also a legal entity (*rechtspersoon*) can be equated with a human being (*natuurlijke person*) because they both carry legal rights and obligations (Achmad, 2016).

"A corporation, even though according to civil law, can carry out its own legal acts, but it does not have a physical existence and therefore cannot act in real terms, nor does it have an inner mind so that the corporation also has no intention to carry out any action or deed, but by the actions of its managers (Achmad, 2016)."

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According to experts, there are two main teachings that are the basis for justification for being able to impose criminal liability on corporations, namely (1) the Doctrine of Strict Liability *and (2) the* Doctrine of Vicarious Liability (Achmad, 2016).

Based on Article 46 of Law Number 44 of 2009 concerning Hospitals, Hospitals as a corporation are legally responsible for all losses incurred due to negligence committed by health workers in hospitals. Although the legal responsibility of hospitals to patients in the

implementation of health services is born from the relationship between civil law and administrative law, the implementation of health services also has implications for criminal law. The legal responsibility of hospitals in the implementation of health services for patients can be seen from the aspects of professional ethics, administrative law, namely sanctions for removal of positions against authorized officials, civil law with the payment of compensation as a form of accountability for the hospital to carry out court decisions and/or criminal law with a sentence.

Criminal liability has a close relationship with the determination of criminal law subjects. The subject of criminal law in the provisions of the law is the perpetrator of a criminal act who can be held accountable for all legal acts he commits as a manifestation of responsibility for his mistakes against others (victims). Hospitals can be the subject of criminal law, namely corporations in the form of legal entities (Article 7 paragraph 3 of Law Number 44 of 2009 concerning Hospitals) Hospitals as subjects of special criminal law (special legal subjects). The specificity of the subject of hospital law in criminal law is that it cannot commit a criminal act that is personal and delinquent for functional crimes. Functional crimes are crimes caused because corporations do not carry out certain functions as required/required by laws and regulations.

In the United States, there is a concept of holding corporations criminally liable, namely through the doctrine of *superior respondent* or *vicarious liability*. As Russel G. Thornton said in his journal Responsibility *for The Act of Others*, which states that (Thornton, 2010):

"*Respondeat superior embodies the general rule that an employer is responsible for the negligent acts or omissions of its employees. Under respondeat superior an employer is liable for the negligent act or omission of any employee acting within the course and scope of his employment*."

In its translation, *superior respondent* embodies the general rule that employers are liable for the negligent or negligent actions of their employees. Under the responding employer, the employer is responsible for the acts of negligence or negligence of the employee acting within the field and scope of his or her job. According to this doctrine, if an employee of a corporation commits a criminal act within the scope of his work with the intention of benefiting the corporation, then his criminal liability can be imposed on the corporation. This principle aims to prevent companies from protecting themselves and abdicating responsibility, by delegating illegal company activities to their workers. The doctrine of *vicarious liability* usually applies in civil law about unlawful acts (*the law of tort*), which is then applied to criminal law. The crime caused by corporations is very large, one of the victims is workers. Corporations, with their financial power and expertise, can eliminate evidence of crime.

In addition, proven corporate crimes can also be categorized as transnational crimes that are organized. It is said that this is because corporate crime involves a systematic system and its elements that are very conducive. It is said to involve a systematic system because of the existence of a very solid criminal organization (*Criminal Group*) both because of ethnic ties, political interests and interests of other interests, with a clear code of

ethics. Meanwhile, related to the "elements that are very conducive" that in corporate crime there is always a group (protector) consisting of law enforcement and professional personnel, among others. and community groups that enjoy the results of the crimes committed systematically (Harminingtyas, 2014).

However, if it is proven that only individuals commit criminal acts, in Article 2 of the Criminal Code (KUHP) it is stated, "criminal provisions in Indonesian legislation apply to every person who commits a crime in Indonesia". The formulation of this Article stipulates that every person within the jurisdiction of Indonesia, can be held criminally responsible for the mistakes he makes. For doctors or other health workers, criminally disclosing medical secrets is threatened with violating Article 322 of the Criminal Code with a threat of punishment of up to 9 months in prison.

Meanwhile, in the context of a special crime, if it is proven that there is a party who commits hacking, both inside and outside the members of a hospital, it is also categorized as a criminal act because it is considered to disturb order in society. It is said to disturb order in society because it can cause material and moral losses. Material losses in terms of electronic medical records can be in the form of dismissal from their jobs if it is known that patients who experience data leaks have certain diseases or medical conditions that are confidential and known to the public, of course this will be very detrimental. Meanwhile, moral losses can be in the form of medical photos of patients that are not appropriate to be seen and then disseminated, so it will be able to have a heavy psychological impact on patients.

The basis for the application of the Criminal Code to the crime of hacking is listed in article 167 of the Criminal Code as follows:

Paragraph (1) says that whoever forcibly enters a house, room, or enclosed yard that is used by another person unlawfully or is unlawfully there, and at his request or order not to leave immediately, shall be threatened with imprisonment for a maximum of nine months or a fine of up to four thousand five hundred rupiah.

While paragraph (2) says that whoever enters by damaging or climbing, by using false keys, false orders or false evil clothes or whoever does not know the right first and not because of mistake to enter and is caught there at night is considered to have forced entry.

In terms of threats, paragraph (3) says that if you issue a threat or use a means that can scare people, you will be threatened with imprisonment for a maximum of one year and four months.

Paragraph (4) adds that the crime in paragraphs 1 and 3 can be increased by one-third if the person commits the crime of two or more people by allying.

Meanwhile, in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, hereinafter abbreviated as the ITE Law, the crime of hacking has been regulated and formulated in articles that can ensnare the perpetrators of the crime of hacking (*hacking*). Basically, the crime of hacking is regulated in general in article 30 of the ITE Law which reads as follows:

Paragraph (1) says that every person knowingly and without rights or unlawfully accesses another Person's Computer and/or Electronic System in any way.

Furthermore, paragraph (2) says that every Person intentionally and without rights or against the law accesses another person's Computer and/or Electronic System in any way with the aim of obtaining Electronic Information and/or Electronic Documents.

It is also added in paragraph (3), namely every Person intentionally and without rights or unlawfully accesses another Person's Computer and/or Electronic System in any way by violating, breaking through, exceeding, or breaking the security system. The elements of the crime of hacking contained in the article above are: Every person; intentionally and without rights or against the law; access another person's computer and/or electronic system; by any means.

The formulation of hacking as a criminal act in the ITE Law article 30 paragraph (1) above is threatened with criminal sanctions contained in the criminal provisions of article 46 paragraph (1), namely: "Every person who meets the elements as referred to in article 30 paragraph (1), shall be sentenced to a maximum of 6 (six) years in prison and/or a maximum fine of Rp 600,000,000.00 (six hundred million rupiah)".

Meanwhile, the formulation of *hacking* as a criminal act in the ITE Law article 30 paragraph (2) above is threatened with criminal sanctions contained in the criminal provisions of article 46 paragraph (2), namely: "Every person who meets the elements as referred to in article 30 paragraph (2), shall be sentenced to a maximum of 7 (seven) years in prison and/or a maximum fine of Rp 700,000,000.00 (seven hundred million rupiah)".

Also, the formulation of hacking as a criminal act in the ITE Law article 30 paragraph (3) above is threatened with criminal sanctions contained in the criminal provisions of article 46 paragraph (3), namely: "Every person who meets the elements as referred to in article 30 paragraph (3), is sentenced to a maximum of 8 (eight) years in prison and/or a maximum fine of Rp 800,000,000.00 (eight hundred million rupiah)".

Article 67 of Law Number 27 of 2022 concerning Personal Data Protection also regulates criminal provisions for parties who are proven to be unlawful. It is explained that in paragraphs (1)-(3):

Paragraph (1) says that any Person who deliberately and unlawfully obtains or collects Personal Data that does not belong to him or herself or others with the intention of benefiting himself or others that may result in the loss of the Personal Data Subject as referred to in Article 65 paragraph (1) shall be sentenced to imprisonment for a maximum of 5 (five) years and/or a maximum fine of Rp5,000,000,000, 00 (five billion rupiah).

Meanwhile, paragraph (2), every person who deliberately and unlawfully embezzles Personal Data that does not belong to him as referred to in Article 65 paragraph (2) shall be sentenced to a maximum of 4 (four) years in prison and/or a maximum fine of Rp4,000,000,000.00 (four billion rupiah).

Paragraph (3) says that every Person who deliberately and unlawfully uses Personal Data that does not belong to him as referred to in Article 65 paragraph (3) shall be sentenced to imprisonment for a maximum of 5 (five) years and/or a maximum fine of Rp5,000,000,000.00 (five billion rupiah).

However, in this study, several things are still found that are problems in the implementation of some of the laws above. Some examples of problems encountered in the implementation of hospital responsibility in managing electronic medical records today are:

a. Most of the Health Service Facilities have not been able to change the process of recording Medical Records Electronically, while the Minister of Health Regulation 269 of 2008 concerning Medical Records has been revoked, so that there is still a legal vacuum for the creation of conventional and hybrid Medical Records in the form of a transition from conventional to modern systems, as well as a high possibility for the unpreparedness of hospitals in protecting patients' electronic data.
b. Electronic Medical Record Documents have not had evidentiary value in court according to Law No. 8 of 1981 concerning the Criminal Procedure Law which states that only RM is included as valid evidence as a "letter" in Article 184 paragraph (1) of the Criminal Procedure Code which states that valid evidence is: witness statements, expert statements, letters, instructions and statements of the defendant, but not electronically.

The government has not yet established a special regulation on the technical implementation of the implementation of Electronic Medical Records by Hospitals and other Health Service Facilities.

CONCLUSSION

The hospital's legal obligation to the patient's RME is divided into three, namely administrative legal obligations, civil legal obligations and the obligation not to commit criminal acts related to the RME data that they physically control. Administrative legal obligations are based on Articles 46 and 47 of Law Number 44 of 2009 concerning Hospitals, while civil law obligations are contained in article 1234 of the Civil Code and article 1239 of the Civil Code. For criminal law obligations contained in Articles 29, 38 and 39 of Law Number 44 of 2009 concerning Hospitals, articles 46 and 47 of Law Number 29 of 2004 concerning Medical Practice, articles 3, 4, 7, 20, 23, 29, 30 and 32 of the Regulation of the Minister of Health of the Republic of Indonesia Number 24 of 2022 concerning Medical Records, as well as article 2, 12, 15, 17 and 25 Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2018 concerning Hospital Obligations and Patient Obligations. Three things that the author can conclude here are: The legal basis of Medical Records (RM) in the Regulation of the Minister of Health of the Republic of Indonesia Number 24 of 2022 concerning Medical Records, Electronic Medical Records are only in the form of documents, so the approval of medical actions cannot be fully valid as legal evidence; Electronic approval of Medical Actions (electronic signatures) has not been regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 24 of 2022 concerning Medical Records; Article 15 of Law Number 27 of 2022 concerning Personal Data Protection allows the dissemination of data but is not discussed at all in a medical context.

The form of responsibility of the Hospital for the security and confidentiality of patient electronic medical record data is also divided into administrative law, civil law and criminal

law. Administrative sanctions can be imposed on health workers and health service facilities that are suspected of violating the provisions, including hospitals in Law no. 36 of 2009 concerning health, especially in article 57 paragraph (1) where everyone has the right to the confidentiality of their personal health conditions that have been submitted to health service providers written in article 188 paragraph (3) in the form of written warnings, revocation of temporary permits and/or permanent permits. For now, administrative sanctions for hospitals related to violations of the implementation of electronic medical records are specifically regulated by Articles 42-44 of the Regulation of the Minister of Health of the Republic of Indonesia Number 24 of 2022 concerning Medical Records. As for civil liability, in principle it is the same as civil law sanctions for violations of not properly conducting informed consent, while the articles that regulate this are articles 1234, 1239, 1367, 1601, 1365, and article 1239 of the Civil Code. The form of criminal liability if it is proven that the hospital, either as a corporation or an individual, commits a criminal act of disclosure of medical records is written in Article 46 of Law Number 44 of 2009 concerning Hospitals. As for doctors or other health workers, criminally those who disclose medical secrets are threatened with violating Article 322 of the Criminal Code with a threat of punishment of up to 9 months in prison. In the context of the special crime of hacking, it is currently written in Article 167 of the Criminal Code and Article 30 of Law Number 19 of 2016 concerning Information and Electronic Transactions. Based on the description of the results of the formulation of the problem above, there are several that the author can conclude here, namely: Permenkes 269 of 2008 concerning Medical Records has been revoked, so that there is still a legal vacuum for the creation of conventional and hybrid Medical Records; Electronic Medical Record documents have not had evidentiary value in court according to Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) which states that only RM is included as valid evidence as a "letter" in Article 184 paragraph (1) of the Criminal Procedure Code; seems too hasty in setting the deadline for the implementation of RME, which is the end of 2023, while it has not yet formed special regulations on the technical implementation of the implementation of Electronic Medical Records by Hospitals and other Health Service Facilities.

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