

## CHAPTER ONE

### INTRODUCTION

#### A. Background

In this globalization era, rapid technological and scientific advancements have an impact on the advancement of healthcare services. The main goal of healthcare services is to prevent and treat disease, which includes the relationship between healthcare professional and patients who require treatment. People demands healthcare professionals to provide better healthcare services.<sup>1</sup>

However, health care services do not always produce good outcomes as expected.<sup>2</sup> A medical accident could happen all the time. The behavior of healthcare professionals is also seen to be a significant issue in the quality of the healthcare service received by the patients and the overall performance of healthcare units.<sup>3</sup>

Some accidents rarely happen unless someone has acted negligently.<sup>4</sup> Healthcare negligence especially medical negligence is an increasing public health concern among healthcare professionals worldwide as it affects

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<sup>1</sup> Riau J. I. H., "Pertanggungjawaban Pidana terhadap Dokter atas Kesalahan dan Kelalaian dalam Memberikan Pelayanan Medis di Rumah Sakit", *Jurnal Ilmu Hukum Riau*, vol.3, no.2 (2013), p. 9084.

<sup>2</sup>Bahareh T., Ali T., Sayed A. M., "Professional Legislation Knowledge of Dentists and Psychological Effects of Negligence", *Journal of Forensic and Legal Medicine*, vol.81, no.1 (2021), p.102199.

<sup>3</sup> Sumathi N., "Human Resource Practices in Public Health Care Sector: A Perceptual Study among Healthcare Professionals", *International Journal of Public Health Science*, vol.6, no.1 (2017), p.51-56.

<sup>4</sup> Findlaw's team of legal writer and editor, 2018, *Res Ipsa Loquitur and Evidence Law*, <https://www.findlaw.com/injury/accident-injury-law/res-ipsa-loquitur.html> (Retrieved: 13.21, August 3rd, 2021).

patient safety. It poses a significant risk of patient injury, disease, disability, or death.<sup>5</sup>

The quality of healthcare services in Indonesia is relatively poor. Medication errors, poor care practice and performance, poor clinical judgment leading to adverse events, lack of timeliness, and faulty equipment are the aspects of poor quality of healthcare due to the ineptitude of health care professionals.<sup>6</sup>

In recent years, negligence of healthcare professionals still occurs in Indonesia. It is proven by the Supreme Court Ruling No. 3203 / K / PDT / 2017 of Mr Samat against Doctor Andjojo D.H [2017]. Mr Samat is the claimant who suffered injuries due to the defendant's negligence of dr. Andjojo. The lawsuit failed at the Court of the first instance (*Pengadilan Negeri Jakarta Barat*), the panel of judges rejected the plaintiff's claim. The mentioned judges admitted that the defendant had complied with all necessary procedures. On appeal, the decision at first instance has been reinforced by the Jakarta Court of Appeals judges. The judges state that there was no reason to reject the conclusion of the Court of the first instance because there was no novelty in evidences, and it turned out to be the only repetition. Ultimately, the judges of Supreme Court of Cassation accepted

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<sup>5</sup> Dahlawi, S., Menezes, G., Khan, A., Waris, A., Saifullah, & Naseer, M., "Medical Negligence in Healthcare Organizations and Its Impact on Patient Safety and Public Health: A Bibliometric Study", *F1000Research*, vol.10, no.174 (2021), p.174.

<sup>6</sup> Mahendradhata Y, Trisnantoro L, Listyadewi S, Soewondo P, Marthias T. et al., "The Republic of Indonesia Health System Review", *Health Systems in Transition*, vol.7, no.1 (2017), p.1-6.

the claimant's request and decided that the defendant was guilty of negligently causing the patient's serious injury.<sup>7</sup>

Another case is the conviction of three obstetricians in late 2013. The case (commonly cited as doctor Ayu's case) was both phenomenal and controversial. Dr. Ayu's case refers to the conviction of three obstetricians, namely Dewa Ayu Sasiary Prawani, Hendri Simanjuntak, and Hendi Siagian, by the Supreme Court of the Republic of Indonesia in 2012. Actually, in the court of first instance (*Pengadilan Negeri Manado*), the panel of judges acquitted the accused persons. The mentioned judges admitted that the accused persons had complied to all necessary procedures and the death of the patient was due to an unforeseeable cause. However, the panel of judges on cassation held that the court of first instance incorrectly applied the law to the mentioned case and therefore rectified it. In their own decision, the panel of judges decided that the accused persons were guilty for negligently causing the death of the patient.<sup>8</sup>

Poor and good health care services affect people's health and well-being.<sup>9</sup> People demand health because of its role in facilitating and providing happiness.<sup>10</sup> According to a new joint report by the Organization

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<sup>7</sup> Decision Of Supreme Court, 2017, *Putusan Nomor 3203 K/Pdt/2017*, [File:///C:/Users/Notebook/Downloads/Putusan\\_3203\\_K\\_Pdt\\_2017\\_20201120.Pdf](File:///C:/Users/Notebook/Downloads/Putusan_3203_K_Pdt_2017_20201120.Pdf) (Retrieved: 16.40, November 20th, 2020).

<sup>8</sup> Susila, M. E., "Criminal Prosecution of Doctors in Indonesia: Issues And Problems", *IIUM Law Journal*, vol.23, no.3 (2015), p. 439-458.

<sup>9</sup> Office of Disease Prevention and Health Promotion, 2020, *Healthy People.gov*, <https://www.healthypeople.gov/2020/leading-health-indicators/2020-lhi-topics/Access-to-Health-Services> (Retrieved: 09.51, August 17th, 2021).

<sup>10</sup> Economic Report of the President, "The Important of Health and Health Care", *Authenticated US Government Information GPO.*, (2006).

for Economic Co-operation and Development (OECD), World Health Organization (WHO) and the World Bank, poor health care services are holding back progress on improving health in countries at all income levels.<sup>11</sup>

A person cannot restrict his liability for death or personal injury resulting from negligence and, in the case of other loss or damage, except in so far as the term of requirement.<sup>12</sup> Under strict liability, healthcare professionals are liable if it is not proven that there is no causal connection between their actions and an adverse event on the patient. An efficient medical liability system aims to incentivize an optimal level of precaution and compensates injured patients.<sup>13</sup>

In essence, negligence of healthcare professionals in carrying out a medical profession are form of interpretation that is very important to be reviewed together. It is influenced by the emergence of negligence that indicate a detrimental impact. Moreover, health care services of healthcare professionals are closely related to people's livelihoods. Therefore, health care services have a direct connection with the law on public services. In order to establish worthy public service, the Indonesian government has enacted Law No. 25 of 2009 concerning Public Services.

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<sup>11</sup> World Health Organization, 2018, News, <https://www.who.int/news/item/05-07-2018-low-quality-healthcare-is-increasing-the-burden-of-illness-and-health-costs-globally> (Retrieved: 20.33, August 17th, 2021).

<sup>12</sup> Richards, P.H., Curzon, L.B., 2011, Definition of Negligence. *Longman Dictionary of Law, Eight Edition*, Pearson Education Limited.

<sup>13</sup> Bertoli, P., Grembi, V., "Medical Malpractice: How Legal Liability Affects Medical Decisions", *Emerald Publishing Limited*, (2018).

The situation above has come to the attention of the author and decided this issue as the object of research with the title “**LIABILITY OF HEALTHCARE PROFESSIONALS DUE TO NEGLIGENCE IN PROVIDING HEALTH CARE SERVICES FROM THE PERSPECTIVE OF THE PUBLIC SERVICES ACT 2009 AND HEALTHCARE PROFESSIONAL ACT 2014**”.

**B. Research Problem**

1. What are the causes of healthcare professionals’ or healthpractitioners’ negligence?
2. How are the healthcare professional liabilities due to negligence from the perspective of the Public Service Act 2009?

**C. Objectives of Research**

1. To identify the causes of healthcare professionals’ or health practitioners’ negligence.
2. To elaborate healthcare professional liabilities due to negligence from the perspective of the Public Service Act 2009.

**D. Benefits of Research**

There are two benefits in this research, namely:

1. Theoretical Benefit

The research gives the advantage to identify the causes of healthcare

professionals' negligence in providing healthcare services.

## 2. Practical Benefit

The research provides a better understanding of the liabilities of healthcare professional due to negligence in providing healthcare services from the perspective of the Public Service Act 2009.