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The Investigation Model of Malpractices in Hospital Based On Principle of Justice and Legal Protection Through Due Process Model Approach in Indonesia

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Abstract

This research concentrates on discussing the ideal model used by the police department in the investigation of hospital malpractices. This research is empirical in nature. The results of the research are: (1) the investigation model used by police departments to disclose malpractices in hospitals in Indonesia should be based on the Friedman theory which covers three elements of a judicial system. (2) Steps should be taken to apply due process approaches in the an investigation by police department by embracing the principle of innocence until proven guilty.

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1. Introduction

The ideals of the Indonesian nation as it is stipulated in the opening of the 1945 constitution are to protect all the Indonesian people and their entire motherland, advance the public welfare, develop the intellectual life of the nation, and contribute towards the establishment of a world order based on freedom, peace and social justice. In health field, the objects are the people in general or humans specifically, therefore health services have to be good and responsible services. 'Good' in this sense is objective that sometimes this may cause conflicts of what things that can be considered

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as good and correct according to the Hospital's, Healthcare worker'. Patients' and people's view. Conflicts that occur around this problem sometimes arise question whether Hospital or Health practitioners are holding on to the prevailing regulation, and malpractices may occur which leads to violation of human rights as example below :

Medical Malpractice Suits are almost unheard of reaching the court There are even plenty malpractice cases that stay in cops' table. Victim's family is furious, they protested Polda Metro Jaya (PMJ). This peaceful action was held by 50 malpractice victims' families at a Police Station which is located on Jalan Sudirman, Jakarta Selatan, Senin (1/82/007) at 17.00. These victims' families stretched out a big black banner with 1.5 x 7 m in size. The banner says ' Kapolri and Kapolda please address our malpractice cases. It has been years but there is no solution yet'¹

Health attempt implementation according to Article 48 Health of Law is carried out through various activities such as healthcare, which according to Article 49 clause (1) that Government, Local Government and citizens are responsible for health attempt implementation. Verse 2 states that Health Attempt Implementation has to consider social function, value, and religious norms, social and cultural, moral and profession ethics. For that reason the government is planning health evolvement as one of the national evolvement attempts that is directed in order to achieve awareness, willingness and ability to live healthy to every citizen in order to manifest an optimal health level. To achieve that goal, not only adequate physical facilities are required, but also improvement in health worker skills. To be a health care worker, it is advised that not only sufficient education is required, but also honesty and dedication are required as absolute requirements. One of the physical facilities for health care services is Hospital (Hospital Act) , in Article 1 in Indonesian Rules and Regulation No 44 of 2009 concerning Hospital is regulated as follows “

- (1) Stipulated that Hospital as Health Service institution that implements individual health service plenary that provides inpatient, outpatient, and emergency services.

In health law, if the health official or the hospital applies malpractice, they can be sanctioned, but this rarely occurs. Whether this reason becomes the reason to why malpractices in health service are getting more and more common in society is likely. The problem in this research is limited to investigation of alleged hospital malpractices. Based on the explanation above, the problem in this dissertation research can be formulated as follows :

1. What kind of model that should be implemented by the Police Department in processing an alleged malpractice investigation that is applied by the Hospitals in Indonesia ?
2. What steps should be conducted to apply a *due process approach* in an investigation process by the Police Department in Indonesia.

2. Underlying Theories

Investigation is a part of criminal justice system now is becoming a term that reflects the work mechanism in crime eradication with basic approach system. The aim of criminal justice system can be formulated as follows : (a) prevent the people from becoming victims of crimes; (b) solve criminal case that occurs thus the public can be satisfied for the people justice has been served and the criminals have been punished; and, (c) seek those who have committed crimes will not repeat it². According to Friedman which is quoted by Bambang Poernomo³, says that a state law enforcement instrument as “police” in a broader meaning obtain continuous discipline to become a professional instrument to be able to work capably as law practitioners and public servant. Professional legal enforcement officials and lawsuits at administrative court to the officials that abuses the authority / power (*abus de droit*) which enables a

¹ [Http://www.detik.com](http://www.detik.com), Ramdhan Muhaimin 8 januari 2013 pukul 11.00 WIB

² Romli Atmasasmita, 2011, *Sistem Peradilan Pidana Kontemporer*, Kencana Prenada Media, Jakarta , p. 3.

³ Bambang Poernomo, *Pandangan Terhadap Azas-azas Umum Hukum Acara Pidana*, Liberty, Yogyakarta, p. 6.

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