

## CHAPTER 1

### INTRODUCTION

#### 1.1 Background of Study

This study analyzed Legal Risk Management (LRM) during crisis in Malaysian hospitals. The study concentrates on crisis management during bomb threat and evacuation process. Based in literature LRM is a three-step process (Hamzah, 2010). First, a party needs to study the business environment and defines legal risks. Second, the risks are analyzed and ranked according to their seriousness or gravity. Third, preventive or mitigation action is taken and this usually takes the form of previously prepared legal documents. Such mitigation steps are sometimes reactive such as when another party sues an enterprise. In assessing the seriousness of legal risk exposures, the elements of probability and severity of risks must be addressed and appropriate mitigation steps must be taken accordingly. Therefore, the context of LRM in this study will be focusing on legal liability in crisis.

The Cambridge Dictionary stated that legal liability is the responsibility that someone has for their actions. For example, the responsibility to pay another person for harm or damage that is a result of these actions. Based on the published research, no study has been conducted in Malaysia regarding liability in the management of the bomb threat and evacuation. Furthermore, the hospital is a soft target and much of the people in them have no adequate training to know what to do when a major attack occurs.

Therefore, to help the parties involved in decision making during the crisis, this study will be focusing on the LRM in the context of legal liability aspect as in Tort Law. The relationship between The Stakeholder Theory in Crisis Management, Corporate Governance and Hospital Enterprise Risk Management and Liabilities in Emergency Management also will be discussed in this study.

In Malaysia, Private Healthcare Facilities and Services Act (PHFSA) 1998 defined private hospital as any facility, other than government hospitals or institutions, which is used or meant to be utilized for the reception, accommodation, treatment, and care of those who need medical or dental treatment that needs hospitalization. Health Facts 2018 by Ministry of Health (2017) reported, there are 200 licensed private hospitals in Malaysia with 14,799 beds. The number of private hospital and beds have increased within 5 years. In 2021, the number of licensed private hospitals are 209 with 17,628 beds (Ministry of Health, 2022)

## **1.2 Statement of the Problem**

According to Glasberg, Hartmann, Draheim, Tamm, and Hessel (2014), hospital crisis is described as an incident or sequence of events that can occur either unexpectedly or take some time to develop. It tends to result in a serious, critical issue with potentially negative implications for the hospital which must be resolved immediately. For the crisis management in hospital, it is defined as a long-term approach and involve a continuous method of development and improvement where the enterprise need to manage or prevent or minimize the severe risk by the crisis (Harwati, 2013). Hospitals are also critical infrastructures and soft targets, as they are open to the general public, visitors, and guests, making comprehensive security management are difficult to obtain (Jenkins, Affairs, Corporation, Security, & Affairs, 2009). There

are cases where hospital employees and facilities are not trained or prepared to a terrorist attack, as well as terrorists continue to focus on soft targets, which appear to provide high body counts and symbolic value.

55 out of 103 terrorist attacks on hospitals between 1981 and 2013 resulted in fatalities (19 of the attacks resulted in the death of more than 10 people) (Ganor & Wernli, 2013). Approximately 775 individuals were killed and 1,217 others were injured in the 43 nations on all continents where hospitals were the target of this terrorist assault. In addition, explosive-based terrorist attacks against hospitals were particularly prevalent during this time period. This explosion event included 45 assaults (27 bombings, 10 suicide bombings, and eight car bombings).

The motivation for this research is to find out how private hospitals in Malaysia are prepared for bomb threat incidents, evacuation process, and potential legal liability resulting from terrorist and criminal acts. The explosion is one of the most commonly used terror weapons because it causes widespread panic, has a large, spectacular impact, and is difficult to prevent. Besides, those involved in emergency management such as emergency managers need to be inform about the existence of legal issues in ordinary emergency response operations (Wilson & McCreight, 2012). It is critical to draw attention to problems that frequently receive less attention than traditional emergency management problems and to offer details that could help local and state governments planning, preparing and responding to emergencies. Therefore, exploring the problems can be carry out by using the Legal Risk Management as per ISO 31022 Standard (International Organization for Standardization, 2020).

The bomb threat incident occurred at KPJSSH on 27 November 2018 (KPJ, 2018a). The evacuation process following the bomb threat involves 117 inpatients (72 stable patients and 45 unstable cases), 169 staff and 60 visitors (KPJ, 2018). KPJSSH

the reviewed the incidents. In order to improve the competency of crisis management in the hospital, four initiatives must be accomplished. The four initiatives are (KPJ, 2018, p. 70): (1) Line of Authority to give command for “Evacuation Process” during bomb threat events; (2) To develop Standard Operating Procedures (SOP) between the private and government sectors during any disaster event; (3) Future Memorandum of Understanding (MOU) between private and government hospitals relating to transfer process; and (4) Capability of each hospital in receiving ventilators and critical cases.

After the incident, a Post Mortem Meeting has been held in Port Dickson, Negeri Sembilan on 26th January 2020. The meeting was attended by the representative from National Security Council (NSC) of Negeri Sembilan, State Health Department of Negeri Sembilan, Royal Malaysian Police, Fire and Rescue Department and KPJSSH. Among the objectives of the Meeting was to develop the coordination SOP in this case referring to patient transfer guideline in crisis situation from Malaysian private hospital to Government Hospital. However, based on the communication through e-mail with KPJSSH Risk Officer on 7th October 2020, the hospital has yet to receive any SOP for the coordination.

Without a proper guideline, the process of evacuation and transfer can exposed the Malaysian private hospital to legal risk. For example, the legal risk that can occur during patient transfer process which is the leaked of patient's medical information. Under the tort law, patient information is defined as Medical Confidentiality (D. P. N. J. Kassim, 2010). Medical confidentiality means the obligation and duty applies to all confidential patient's information and not only limited to medical materials & record. The breach of duty in medical confidentiality can exposed the medical staff into civil liability. In the case of *Dr Tan Ah Ba v Dr Wong Foot Meow [2012] 7 MLJ 467*, the

court held that the defendant liable for breach of his duty of confidentiality and breach of contract.

### **1.3 Research Questions**

The purpose of this study is to identify the LRM in terms of legal liability in managing the crisis. This LRM then can be used as input to both Government Agencies and Private Sector for crisis management in bomb threat and hospital evacuation. Thus, the objectives of this study are as follows:

1. What are legal risks faced by Malaysian private hospital during crisis?
2. What are relevant area of law governing the legal risks?
3. How does the hospital mitigate the legal risks?
4. What are additional risk mitigation actions that can be implemented by the hospital?

### **1.4 Objectives of the Study**

Based on the research background, this study attempt to answer the following Research Questions:

1. To identify legal risks during crisis in Malaysian private hospital
2. To identify relevant area of law governing the legal risks
3. To analyze legal risk in the crisis management
4. To investigate current and additional Legal Risk Mitigation action

### **1.5 The Significance of the Study**

KPJSSH like any other private hospital provides reception, accommodation, treatment, and care to those requiring medical treatments and hospitalization. The

service to provide medical treatments involves patient, hospital staffs and visitors. This normal operation, which is medical treatments, exposed the hospital to legal liabilities. For examples, medical negligence to patients or injuries to hospital visitors. Moreover, during crisis. For example, the process of patients' evacuation exposed the hospital to legal liabilities due to negligence or injury. Therefore, in developing the evacuation command, coordinating SOP between government and private sector during disaster, and MOU for patient transfer, the hospital needs to address potential legal risks. The legal risks can be used as references or inputs in developing the initiatives. Hence, the chain of command, SOP and MOU formulated by considering these potential legal risks can reduce the hospital, as well as government to legal liabilities. Failure to consider potential legal risks in the chain of command, MOU and SOP can impose legal liabilities to the private hospitals and relevant government agencies by means of legal actions taken by the grieving parties of the incidents. By identifying potential legal risks, both private hospitals and relevant government agencies can plan strategies to mitigate their legal liabilities exposures. Through developing adequate legal defenses and remedies in terms of insurance protection or monetary compensation if any legal action commences. Thus, in light of these considerations, the objective of this study is to identify potential legal risks during crisis in private hospital. In addition, the relevant area of law governing the legal risks are discussed.

#### **1.6 Scope and Limitation of the Study**

The scope of the study will be on legal liability risk in crisis management which also known as legal risk. This study will be conducted in KPJSSH and the latest legal risk management guidelines standard known as Guidelines for the management of legal

risk (ISO 31022:2020). The study also involve the relevant government authority in Negeri Sembilan.

This study was carried out in consideration of the specific challenges presented by the Malaysian Government in regard to the COVID-19 pandemic of the coronavirus disease. In 2020 until 2022, the world was responding to a new coronavirus disease that the World Health Organization (WHO) has formally called COVID-19. The virus first appeared in China in December 2019 and spread quickly to other nations, causing a pandemic. Many nations have proposed laws and instructions to stay at home as a result of the urge to avoid social interactions and maintain physical distance.

In response to the COVID-19 pandemic which might affect Malaysia starting on March 18, 2020, the Malaysian government has enacted the Movement Control Order (MCO), a set of nationwide quarantine and cordon sanitaire measures. Nationwide, educational institutions including schools, colleges, and universities have had to close as a result of the government's implementation of the Movement Control Order (MCO). Consequently, there has been a huge change away from traditional face-to-face instruction toward online and at-home learning.

When COVID-19-related restrictions were put in place, the researcher was just about to start gathering data and interviewing selected respondents for this study. Key employees such as the Medical Director and Specialist, Safety and Health Manager, Royal Malaysian Police Officer, and Fire and Rescue Officer were among the respondents. All respondents contributed significantly to the pandemic response. However, they were willing to take part in the online interview, to share their experiences for the study.

After considering a variety of methodological factors, including technological accessibility, the researcher chose the remote interview method and this method has

being referred to the works of Carter, Shih, Williams, Degeling, and Mooney-Somers (2021) There were two issues that arose during the interview. To begin, there was background noise during the online interview. While asking participants to mute their microphones can often help to reduce background noise, having to turn the microphone on and off during interactions can also disrupt the flow of interactions. Next, technology can perform poorly (computers crash, hardware malfunctions, internet connections go down), either halting research or producing inaudible content. The researcher then took into account the requirement for a specific, accepted backup plan to handle discomfort and maintain cultural safety by clarifying on the necessary elements throughout the interview via a telephone conversation.

Prior to the COVID-19 pandemic, online approaches were irrelevant in qualitative research and weren't frequently considered of as the primary option for collecting data. On the other hand, the research experience obtained by the researcher during the pandemic have given positive impact in terms of gathering the data using alternative way.

### **1.7 Conclusions**

This study sought to understand the legal risk that will be encountered by the Malaysian private hospital during crisis management. The crisis management in this context referring to bomb threat and patient evacuation process. The results of this study may be used as input to develop any Standard Operating Procedure (SOP) or guideline relating to crisis management for bomb threat and patient evacuation.